

REPORTER'S RECORD
VOLUME 1 OF 1 VOLUME
TRIAL COURT CAUSE NO. 2011-76724

HARRIS COUNTY, TEXAS,	*	IN THE DISTRICT COURT OF
<i>Plaintiff</i> , and THE STATE OF	*	
TEXAS, acting by and through	*	
The TEXAS COMMISSION ON	*	
ENVIRONMENTAL QUALITY, <i>a</i>	*	
<i>Necessary and indispensable</i>	*	
<i>Party</i>	*	
v.	*	HARRIS COUNTY, T E X A S
INTERNATIONAL PAPER COMPANY,	*	
MCGINNES INDUSTRIAL	*	
MAINTENANCE CORPORATION,	*	
WASTE MANAGEMENT, INC., AND	*	
WASTE MANAGEMENT OF TEXAS,	*	
INC., <i>Defendants</i> .	*	295TH JUDICIAL DISTRICT

REPORTER'S RECORD

DAILY COPY

NOVEMBER 13, 2014

On the 13th day of November, 2014, the trial came on to be heard in the above-entitled and -numbered cause; and the following proceedings were had before the Honorable Caroline Baker, Judge Presiding, held in Houston, Harris County, Texas:

Proceedings reported by computerized stenotype machine; Reporter's Record produced by computer-assisted transcription.

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**BY: MS. PAULA W. HINTON
MS. MELANIE GRAY**

1 NOVEMBER 13, 2014

2
3 THE COURT: We are ready to go on the
4 record.

5 Mr. Reasoner.

6 MR. REASONER: Yes, Your Honor. Barrett
7 Reasoner for Waste Management of Texas.

8 Waste Management of Texas and MIMC have
9 reached a settlement with the Plaintiffs. The terms at
10 this very moment are going to be kept confidential; but
11 we would like to jointly move at this time to sever the
12 claims against Waste Management of Texas, MIMC, and
13 Waste Management of Texas, Inc. -- I'm sorry, Waste
14 Management, Inc., into a separate cause number, the same
15 cause number with an A added behind it, so that once the
16 statutory notice process that the State needs to go
17 through is complete, we can approach the Court with an
18 agreed final judgment and ask that that be entered by
19 this Court.

20 THE COURT: That is fine. The Court
21 will -- grants that motion to sever. I think we should
22 also make sure to include GC Environmental in that
23 severance, even though they're not technically a party
24 because they go along with these parties that have
25 resolved their matter.

1 MR. REASONER: That is our intention and
2 request, Your Honor, yes.

3 MR. WOTRING: Harris County agrees.

4 MR. BENEDICT: TCEQ agrees.

5 THE COURT: Anything else we need to put on
6 the record at this time?

7 MS. HINTON: No. MIMC joins in that
8 motion, as well, Your Honor.

9 MR. GEORGE: Can we go off a half second?

10 THE COURT: Yes.

11 (Whereupon, after a discussion off the
12 record, the following proceedings were had:)

13 THE COURT: Let's go back on the record. I
14 also understand that in light of this settlement, the
15 parties have reached an agreement on a stipulation for
16 the Court to read to the jury prior to reading them the
17 Charge.

18 MR. GEORGE: Yes, Your Honor. Harris
19 County and TCEQ and International Paper, the remaining
20 parties, have agreed to the following stipulation to be
21 read to the jury. And I will read it, and then if
22 everyone -- if International Paper and TCEQ could state
23 their agreement and then the Court has a paper copy.

24 The stipulation is as follows: "Harris
25 County and TCEQ have reached a settlement with Waste

1 Management of Texas, MIMC, and GC Environmental
2 regarding the claims in this case. Therefore, those
3 Defendants will no longer be part of this trial.
4 Champion Paper and International Paper remain Defendants
5 in this trial. The fact of this settlement does not
6 affect any evidence you have heard and shall have no
7 bearing on the issues you will decide. You should
8 consider all the evidence you have heard during this
9 trial in determining which, if any, party is liable
10 under any statute. Because Waste Management of Texas,
11 MIMC, and GC Environmental have settled, issues related
12 to the Texas Spill Act are no longer part of this
13 trial." And that concludes the stipulation.

14 THE COURT: Is that the stipulation as
15 agreed?

16 MR. BENEDICT: It is, Your Honor.

17 MR. STANFIELD: Your Honor, yes, it is.

18 MR. GEORGE: Nothing further.

19 THE COURT: We can go off the record.

20 (Whereupon, after a discussion off the
21 record, the jury entered the courtroom and the following
22 proceedings were had:)

23 THE COURT: Please be seated.

24 Ladies and gentlemen, before I read you the
25 Charge, I'm going to read an agreed stipulation

1 regarding settlement for you.

2 "Harris County and TCEQ have reached a
3 settlement with Waste Management of Texas, MIMC, and GC
4 Environmental regarding the claims in this case.
5 Therefore, those Defendants will no longer be part of
6 this trial. Champion Paper and International Paper
7 remain Defendants in this trial. The fact of this
8 settlement does not affect any evidence you've heard and
9 shall have no bearing on the issues you will decide.
10 You should consider all the evidence you have heard
11 during this trial in determining which, if any, party is
12 liable under any statute. Because Waste Management of
13 Texas, MIMC, and GC Environmental have settled, issues
14 related to the Texas Spill Act are no longer part of
15 this trial."

16 At this time I'm going to read through the
17 Charge with you, ask you if you have any questions, and
18 then we will proceed with closing arguments.

19 (Whereupon, after the Court's Charge was
20 read to the jury, the following proceedings were had:)

21 THE COURT: Do you understand these
22 instructions? If you do not, please tell me now. And
23 you will see the next few pages are the verdict
24 certificate that we already discussed and then Exhibit A
25 with the photograph that we also discussed.

1 Does anybody have any questions about the
2 Charge?

3 All right. If no one has any questions, we
4 will proceed with --

5 MR. GEORGE: Your Honor, if we could just
6 approach for one minute.

7 THE COURT: Yes.

8 (After a bench discussion outside the
9 hearing of the reporter and jury, the following
10 proceedings were had:)

11 THE COURT: Ladies and gentlemen, I do need
12 to correct one thing. I'm going to make the change on
13 this Charge, so that the official one you have is
14 correct.

15 On Question 12, it should read: "On which
16 dates were the violations that form the basis of your
17 answer to Question 4" -- right?

18 MR. GEORGE: Question 4.

19 THE COURT: -- "Question 4 caused solely by
20 acts or omissions of a third person," not Question 8.
21 So I'll fix both of those items for the official Charge.

22 And then lastly, I meant to make an
23 announcement at the beginning that in order to
24 accommodate everyone who wants to be able to listen to
25 the closing argument, what we've done is -- all the

1 seats, it appears now, are filled. We can't have people
2 standing in the aisles or at the doors. So if we have
3 any people who don't have a seat, you're welcome to go
4 down to the 333rd that's at the end of the hall where we
5 are piping in the closing arguments so that everyone
6 will have an opportunity to listen.

7 With that, we may proceed with closing
8 argument.

9 Mr. Wotring.

10 MR. WOTRING: Thank you, Your Honor.

11 CLOSING ARGUMENT

12 BY MR. WOTRING:

13 Good morning. It seems like only
14 yesterday; but, in fact, it was about a month ago was
15 the last time I actually turned and addressed you. It
16 dawned on me a couple of days ago that you've been
17 looking at my left ear the last few weeks.

18 This will be the next to the last time I
19 get to talk to you. The final time is after the
20 Defendants do their closing and then I get to do a
21 rebuttal. So I'm going to talk about the evidence we've
22 heard in this case. Some of it may be repetitious, but
23 it's been some period of time since you've heard of it.
24 I'm going to try not to use one minute more of your time
25 than is required.

1 But in this case, as in all cases, it's
2 important to the parties who have brought it. This
3 case, I think, is a little bit different because of the
4 issues involved and the scope of those issues and the
5 effect that the verdict in this case might have upon the
6 conduct of others.

7 I don't think that it is an overstatement
8 to say in this case that the decisions made in this case
9 are important to how pollution will be handled in this
10 county, how pollution will be handled in this state, and
11 how pollution will be handled in this country. There
12 are people who are getting together and deliberating all
13 over, federal regulatory agencies, state regulatory
14 agencies, about pollution, how we address pollution, and
15 how we control pollution.

16 I think one of the most important
17 deliberations that's going to go on in this country is
18 the deliberation that is going to go on today after we
19 conclude our argument, and that is the introduction to
20 why I think it's appropriate to take up some more of
21 your time to review the evidence that we've heard in
22 this case, because I do think that the decisions that
23 are made in this courtroom and announced in this
24 courtroom will have momentous effects on how pollution
25 is handled in our country.

1 That's one introductory comment I want to
2 make. The other one is, Harris County is not, Connelly
3 Baker is not, Ernest Wotring is not anti-business or
4 anti-corporation. Harris County is filled with
5 corporations that are responsible and do the right
6 thing. Harris County is filled with people who work for
7 corporations that do the right thing and are
8 responsible.

9 This is a case in which we think it is
10 about a company that did not follow its obligations
11 under the law; and as a result, it should pay a penalty,
12 as required by the law. The law says that if you cause,
13 suffer, allow pollution of the waters of our state, you
14 should pay a penalty. That penalty is assessed by you,
15 the jury.

16 I, obviously, have some suggestions,
17 recommendations, and feel strongly about the amount of
18 the appropriate penalty in this case; but that power is
19 not given to the Harris County Attorney's Office. That
20 is given to the 12 people on this jury, and that is
21 appropriate and rightly so.

22 So with those two comments, I do want to
23 review the evidence with you that we've heard. We know
24 where the pits are located now. They're located within
25 three and a half miles of the San Jacinto Monument.

1 And I think we all now know that some
2 things are not in dispute: How did the sludge get to
3 the site, that's not in dispute. What happened to it
4 when it got there, I don't think that's seriously in
5 dispute; but we can talk about that as we get further in
6 my presentation.

7 And what Champion or International Paper
8 did to stop that sludge containing dioxin from getting
9 out into the river, I don't think that's in dispute
10 either. They did nothing. Nothing. And if you will
11 review the evidence in this case, Champion and
12 International Paper has presented no evidence of
13 anything that they did to stop this sludge containing
14 dioxin from getting out into the river that runs through
15 the heart of our county.

16 Further facts that I don't think are
17 seriously in dispute: Champion put its paper mill
18 sludge in the San Jacinto River waste pits. There is no
19 other waste there. Harris County told them not to let
20 the waste get into the river at the time. Champion left
21 the sludge it produced in the waste pits and abandoned
22 it, even though it knew as of July 14th, 1966 that that
23 sludge -- that site had a pollution problem.

24 In 1985, the EPA determined that dioxin was
25 hazardous, and from 1986 to 1989 Champion knew the paper

1 mill sludge that it was producing by Olympic swimming
2 pool fulls had dioxin in it.

3 From 1985 it was known that the paper mill
4 sludge containing dioxin may be hazardous to people or
5 in the environment; and neither Champion or
6 International Paper warned anyone about the hazardous
7 dioxin in their sludge. And they did nothing to stop
8 that sludge laced with dioxin from getting into the
9 river. And International Paper merged with Champion in
10 2000.

11 The law, as you just heard the judge read,
12 summarizes if you cause, suffer, allow or permit
13 industrial waste containing dioxin to discharge into the
14 waters of the State of Texas, you are required by law to
15 pay a penalty.

16 Now, I've organized the documents that
17 you've heard about so many times into a timeline that I
18 want to review for the purpose of your deliberations.
19 Champion Paper Company in the 1960's knew that it needed
20 to get rid of waste they produced from its paper mill
21 and dispose of it somewhere else. I don't think there's
22 much dispute that if you run a paper mill, you have to
23 run it continuously and you produce Olympic swimming
24 pools filled with sludge and you have to do something
25 with it. That's part of the process of operating a

1 paper mill.

2 In 19 -- June '65 you have the
3 Dr. Quebedeaux letters. It has two paragraphs. It is a
4 Reese's Peanut Butter Cup; it has that chocolate and
5 peanut butter, or it's not a Reese's. And if you don't
6 have those two paragraphs, you don't have the letter
7 from Dr. Quebedeaux.

8 In 1965, Champion hired Ole Peterson to
9 barge its paper mill waste to the San Jacinto River
10 waste pits. The evidence, I think, is undisputed that
11 before doing so, it did no due diligence before hiring
12 Ole Peterson.

13 MIMC then assumed the contract from Ole
14 Peterson and began barging Champion's waste to the San
15 Jacinto pits, and then at the end of that year in
16 December of -- 28th of 1965, the private Champion
17 memorandum says that "Attached is a copy of the letter
18 regarding the disposal of Champion's waste sludge
19 material." While when it got into the pit, itself, it
20 may have not been their material as it was being
21 transported to those waste pits, Champion referred to it
22 as "Champion's waste sludge material."

23 Then in May of '66 the State Department of
24 Health identified seepage and problems with the levees
25 of the San Jacinto River waste pits, and then the

1 Champion July 14th, 1966 memo states, "Because of the
2 pollution problem, it's impractical to consider further
3 dumping at the present location on the San Jacinto
4 River."

5 Here's a 1955 memorandum which starts this
6 chain: "As of 1955, Champion knew that if it wanted to
7 dump this sludge at sea, it would have to take it out
8 110 miles and put it in 400 fathoms of water." That's
9 what this sludge was.

10 Dr. Quebedeaux's June 11th letter was to
11 Burma Engineering. You've heard so many times they say
12 that Dr. Quebedeaux approved the site and the location.
13 He did. And every time he did so, he said, "I would
14 like to remind you again that your waste handling
15 operation should be done in a manner which would not
16 allow any liquid waste to leave the property."

17 His December 28th, 1965 letter specifically
18 stated that his approval was only under the condition
19 that the waste handling operation should be done in a
20 manner in which would never -- not allow any liquid
21 waste to leave the property and escape into the river.
22 He noted again that the dikes being used to contain the
23 waste should be repaired.

24 This is just a repeat of the Private
25 Champion Memorandum in which they recognized their

1 connection to the waste handling, waste sludge material
2 and they also noted that "I am sure we all realize the
3 sensitive nature of this entire operation and the need
4 for special precaution in connection with the disposal
5 of this waste material."

6 And here's the Champion July 14th, 1968
7 Appropriation Request form in which they recognize that
8 because of the pollution problem, "It is impractical to
9 consider further dumping at the present location on the
10 San Jacinto River." And the evidence is undisputed that
11 after the date of this memorandum, there was no
12 investigation by San Jacinto River -- no investigation
13 by Champion or later International Paper to find out
14 what that pollution problem was or to do anything about
15 it.

16 As of August of 1968, the MIMC Board
17 Minutes reflect that these pits were completely filled
18 with sludge material, completely filled; and that's
19 going to become important when we look at what is in
20 those pits now. If you'll remember, there's A, B, and C
21 pits; and now there is no B or C pits because the
22 contents of those pits are gone.

23 And here's an aerial -- the timeline
24 reflecting the 1973 breach in the berms in which the --
25 there's a connection between the waters of the San

1 Jacinto River and the B and C pits. Here's the A pit, B
2 pit, and C pit. And all of those days are highlighted
3 in red because of Dr. Pardue and Dr. Bedient's testimony
4 that every day during that period of time, there was a
5 release of dioxin into the San Jacinto River.

6 In 1985 is when the EPA listed dioxin as a
7 hazardous substance. In 1985. And then from 1986
8 through 1989 is when the EPA, in connection with the
9 industry, did a study on what comes out of paper mills;
10 and we're going to see the testimony in which Champion
11 was part of that study and Champion knew during that
12 study that its paper mill sludge contained dioxin, which
13 was hazardous -- which the EPA had designated as a
14 hazardous substance in 1985.

15 And the Five Mill and the 104 Mill studies
16 confirmed that the paper mill sludge coming out of paper
17 mills, one of them being a Champion facility, had dioxin
18 in it. The evidence is also undisputed that after that
19 period of time, no one at Champion went back and looked
20 into what was going on at the site where they had
21 transported or had MIMC transport their sludge.

22 At the end of that penalty period in 1989,
23 we know from this survey that approximately two-thirds
24 of the impoundments were submerged and inundated by the
25 San Jacinto River. Champion merged with International

1 Paper in 2000, and this site was designated as a
2 Superfund site in 2008.

3 The testimony in this case is also that
4 after International Paper merged with Champion, they did
5 no due diligence other than looking at public filings to
6 find out if Champion had any environmental issues or
7 issues with particular regard to this site. It's the
8 same timeline in a different setting, and I won't
9 belabor it here.

10 Remember, Dr. Joan Meyer testified in this
11 case from the stand about the relationship between the
12 different corporations. The one that's important for us
13 now today is the relationship between Champion Paper and
14 International Paper. There was a corporate transaction
15 in March of 2000. International Paper merged with
16 Condor Acquisitions, and then they all merged together.

17 So as of June of 2000, International Paper
18 and Champion merged together, which is why you have the
19 different date range on the Charge.

20 We heard from a couple of International
21 Paper corporate representatives, one of them being
22 Thomas Duckert. He testified that Champion and
23 International Paper did nothing to contain the paper
24 mill sludge laced with dioxin during the penalty period.
25 He also testified that the -- Champion's president, the

1 highest officer in the company, was briefed about the
2 waste disposal problem at the Texas division and that
3 sludge from the plant basins was being disposed in a
4 low, marshy, bayou area.

5 He confirmed that one of the five mill
6 studies in the EPA Five Mill Study from 1986 to 1989 was
7 a Champion mill and that Champion did nothing after the
8 five mill study about the site.

9 International Paper did no due diligence
10 before merging with Champion; and because this was some
11 time ago, I have a clip of Mr. Dukert's testimony. I
12 think it's approximately 2 minutes:

13 (Video played as follows:

14 "QUESTION: Prior to March 31st of 2008,
15 when is the -- when did Champion take -- or
16 International Paper take any action to investigate the
17 site and any releases of contamination from the site?

18 "ANSWER: As far as I know, International
19 Paper became aware of issues when it became a Superfund
20 site; and beyond that, I think there's going to be some
21 additional expert testimony along those lines. And
22 that's what I recall.

23 "QUESTION: The five mills used in the --
24 in the EPA Five Mill Study, is one of those mills a
25 Champion mill?

1 "ANSWER: Yes, I believe one is a Champion
2 mill. I don't remember the exact name.

3 "QUESTION: And the Five Mill Study was
4 concluded in the latter half of the '80s?

5 "ANSWER: Yes. I recall the EPA published
6 a document on that study. The study occurred mid-'80s
7 and that document may have been published '87/'88 time
8 frame, after the fieldwork had been done and the data
9 was analyzed.

10 "QUESTION: And after the Five Mill Study,
11 there was a more extensive study done by the EPA?

12 "ANSWER: That's correct. I believe it was
13 a 104 Mill Study, is the way it was characterized.

14 "QUESTION: And, generally, what -- what
15 the Five Mill Study showed was that for those plants
16 that participated, there were elevated levels of dioxin
17 downstream of their outflows?

18 "ANSWER: The best way I can remember,
19 there were -- there were various -- let me put it this
20 way, I would have to review the document to tell you
21 exactly what that document said.

22 "QUESTION: After the Five Mill Study was
23 published, did International Paper or Champion go back
24 to the site underlying this lawsuit and conduct any sort
25 of investigation into what was contained within the

1 parameters of the site?

2 "ANSWER: The -- I did not review any
3 documents that indicated that any such task was
4 undertaken.

5 "QUESTION: Have you, as International
6 Paper's representative, seen any record that other waste
7 was deposited at the site, aside from waste from the
8 Champion Pasadena paper mill?

9 "ANSWER: The documents indicate that the
10 only waste that was taken to this particular site was
11 from the Pasadena mill."

12 (Whereupon, the video concluded)

13 MR. WOTRING: That is the 104 Mill Study.
14 It is in evidence as Exhibit No. 691, and what it
15 confirms and was published and what Champion knew was
16 that the sludge coming out of its facility contained
17 dioxin. And as of this date, the EPA had determined
18 that dioxin was, itself, a hazardous substance.

19 The Five Mill Study took place again from
20 1986 to 1989. At the end of that period of time, the
21 site was underwater, and the evidence is undisputed that
22 Champion and then International Paper did nothing about
23 that sludge to stop it from getting into the river. It
24 permitted, it caused, it suffered, it allowed that
25 sludge containing dioxin to get into the San Jacinto

1 River every day.

2 Peter Maples is the other International
3 Paper corporate representative that testified in this
4 case, and he testified that International Paper did no
5 due diligence when merging with Champion Paper, other
6 than look at public filings. International Paper did
7 not look at documents at any Champion facility to see if
8 there might be any environmental issues before merging
9 with the company.

10 And that's a guess to you that if Champion
11 and International Paper have to pay nothing for doing no
12 due diligence about previous environmental problems,
13 then that's the type of due diligence that companies
14 will do in the future when trying to buy and merge with
15 each other. None. They have to pay nothing in this
16 case for failing to identify problems at this Champion
17 facility, then that is what will be going on in the
18 future in other corporate transactions.

19 (Video played as follows:)

20 "QUESTION: Do you know if prior to issuing
21 this public disclosure that International Paper did any
22 due diligence with regard to any environmental
23 liabilities associated with Champion?

24 "ANSWER: So prior to making this offer --

25 "QUESTION: Yes.

1 "ANSWER: Your question is, prior to making
2 this offer, did IP do any due diligence?

3 "QUESTION: For environmental liabilities
4 associated with acquiring Champion?

5 "ANSWER: My understanding is that IP
6 reviewed publicly-available documents, SCC documents,
7 and anything else publicly available.

8 "QUESTION: So there was no -- prior to
9 April 25th, 2000, International Paper didn't conduct any
10 other type of due diligence for Champion regarding
11 environmental liabilities, other than what would have
12 been publicly available?

13 "ANSWER: Correct.

14 "QUESTION: In your review of the documents
15 in getting ready to answer questions based on Topic No.
16 4, the transaction by which Champion became part of or
17 affiliated with IPC, you didn't see any International
18 Paper documents reflecting their review of the documents
19 located at any Champion facility or Champion's
20 headquarters?

21 "ANSWER: Correct. I did not see any
22 review of documents located at Champion's headquarters
23 or any other location."

24 (Whereupon, the video concluded)

25 MR. WOTRING: International Paper's concern

1 was not with looking at what potential problems Champion
2 might have had prior to merging with Champion in 2000.
3 It didn't look at any documents at any facilities, and I
4 would suggest to you what I think you already know that
5 it is Champion and International Paper, as they claim,
6 pay no penalties in this case, then that's the type of
7 due diligence that companies will do in the future.
8 They will not do due diligence to find out what other
9 sludge pits are out in communities on riverbanks because
10 it will be far cheaper and better to do no due diligence
11 and be able to claim that they didn't know.

12 You heard from Captain Frank Ruiz briefly
13 that he observed people fishing around the sites. This
14 is a recreational area. People fish along the banks
15 near the pits. People fish near the pits from boats.
16 People use this river for recreation.

17 We've seen the aerial photographs. I'll
18 run through them quickly. This is the 1973 photo
19 showing the breach in the berm because there was no
20 maintenance, no action was taken with regard to this
21 site, no concern about what might happen to it, no
22 effort to warn anybody about what happened to the site.

23 And I would suggest to you what I think you
24 already know is that if Champion and International Paper
25 are correct, that they should pay nothing in this case,

1 not one dollar for one day of penalty, and that is the
2 type of maintenance, that is the type of care, and that
3 is the type of action and reaction that will happen for
4 pits containing sludge laced with dioxin in the future.

5 1978. I'd also suggest to you that when
6 Champion and International Paper's experts tell you that
7 these pits, which are submerged under the waters of the
8 San Jacinto River, were not releasing daily dioxin or
9 the contents of the paper mill sludge, that they are
10 asking you to disregard the evidence that your own eyes
11 are telling you is that when we put cardboard underwater
12 and submerge it there for weeks, months, and years at a
13 time, that cardboard comes apart, breaks apart, and gets
14 into the water column.

15 Here's the survey; and it's dated the last
16 day of June, 1989. This is the date that these pits
17 were inundated and submerged beneath the waters of the
18 San Jacinto River. It's undisputed during this period
19 of time that International -- Champion did nothing with
20 respect to this site, even though it had known as of
21 July 4th, 1966, that there was a pollution problem at
22 this site.

23 And I would suggest to you what I think you
24 already know, is that if Champion and International
25 Paper have to pay nothing in this case, for not one

1 dollar for one day of violations, that that's what
2 companies will do when they know there's a pollution
3 problem, nothing. Here's a close-up of the survey
4 result.

5 We've heard something about dredging in
6 this case. It may be the only thing the defendants have
7 talked about with respect to this site and that is that
8 somebody else dredged. I think the evidence in this
9 case is that from their own experts, Dr. Zoch and
10 Dr. Johns, that any dredging affecting this site did not
11 happen until 1996 or 1997.

12 And, again, Champion and International
13 Paper did nothing with respect to warning anybody about
14 dioxin at the site, didn't so much as put up a sign,
15 didn't attempt to warn anybody, didn't take any action
16 with respect to stopping the dioxin at the site. They
17 did nothing to warn anybody about dredging at the site.
18 They didn't alert anyone about the existence of this
19 site. They washed their hands of the sludge that they
20 produced from their mill and did nothing with respect to
21 warning anybody about dredging, even though they knew
22 that it was on the banks of the San Jacinto River.

23 And I would suggest again, what I think you
24 already know, that if in this case Champion and
25 International Paper would have to pay nothing, not one

1 dollar for one day of penalties, then that's what
2 companies will do with respect to taking responsibility
3 for warning people about the hazardous materials
4 contained in their waste products, nothing.

5 1989. There's the figure showing again
6 that these pits are under water. In 1995, still in
7 connection with the waters of the San Jacinto River.

8 2005. We now see evidence of dredging, I
9 think, from their experts, in the northwest corner. I
10 don't think there's a credible suggestion in this case
11 that any dredging affected the B and C pit impoundments
12 here, which in this are already under water.

13 We brought you the testimony of Dr. Pardue
14 and Dr. Bedient, who testified that in reasonable
15 scientific probability, that every day starting on
16 February 15th, 1973, there were daily releases of dioxin
17 into the waters of the San Jacinto River, a river that
18 runs through the heart of Harris County.

19 I won't review Dr. Pardue's qualifications,
20 simply to touch on a couple of them. He's the
21 co-director of the EPA Hazardous Substance Research
22 Center. He's consulted on numerous Superfund sites,
23 including the Passaic River where there's also a dioxin
24 issue. He's the director of the Louisiana Water
25 Resources Research Institute. He's a professor at LSU.

1 He testified that there is no record of any
2 maintenance of the berms from February 15th, 1973
3 through March 30th, 2008, that the breach in the
4 impoundments from February 15th, 1973 forward caused
5 daily releases. He told us that the sludge that was
6 contained in those pits had the consistency of water and
7 that once wet cardboard gets wet, it becomes more
8 vulnerable to breaking apart and that paper mill sludge
9 and dioxins were releasing every day on particles or on
10 suspended solids, part of the colloids and suspended
11 solids coming from the paper mill waste.

12 If you'll remember this slide, this shows
13 Pits B and C are gone. He reviewed with us the
14 groundwater monitoring results from this monitoring
15 well, which reflect that the water inside the waste,
16 even today, contains dioxin dissolved in it.

17 He testified about the sampling locations
18 up and down the river and how that supported his opinion
19 in reasonable scientific probability more likely than
20 not that there are daily releases of dioxin from the San
21 Jacinto River.

22 He testified about the sampling above the
23 pits showing dioxin dissolved in the water column. We
24 brought you the testimony of Dr. Phil Bedient who is the
25 Herman Brown Professor of Engineering for Rice

1 University. He's the Chair of the Department of
2 Environmental Science and Engineering at Rice University
3 here in our town.

4 He told you, based upon sampling results
5 near the location and elsewhere, the dioxin was
6 releasing from these pits on a daily basis. The water
7 from the river and rainwater would erode the levees.
8 Water from inside the pits was going to exchange with
9 water from the river starting from February 15th of 1973
10 and that the breaches shown in every aerial photograph
11 after that date. There was no repair work done to
12 change the condition of the berm and that water from
13 inside the pits would exchange with water from the river
14 starting on February 15th of 1973.

15 I've put some quotes because of length of
16 time between today and the time he testified: "I
17 believe that within reasonable scientific certainty that
18 there were discharges each and every day from February
19 15, 1973 going forward." He confirms what I don't think
20 is disputed at this point in time, that this site was
21 submerged by July 1st, 1989, and that "For every day
22 thereafter going forward in time, there is no question
23 in my mind that there were releases of dioxin coming out
24 of these pits. They're in direct connection now,
25 inundation from the river on a daily basis..."

1 I don't know if you need an expert to say
2 that wet cardboard when you submerge it under a river
3 breaks apart and would release its contents on a daily
4 basis, but Drs. Pardue and Bedient gave us that
5 testimony. And more on his sampling locations and how
6 those supported his opinions, his chart reflecting the
7 concentrations and samplings that supported his opinion
8 that dioxin was releasing every day in reasonable
9 scientific probability.

10 And that takes us to the Jury Charge. I'll
11 have more to say after the defendants go, but we have to
12 walk through the Jury Charge because these are the
13 questions and this is the work you are tasked to do now.

14 And the first question you are asked is:
15 "Did you find that any of the following Defendants
16 caused, suffered, allowed or permitted the discharge of
17 industrial waste containing dioxin into or adjacent to
18 any water in the state at any time from February 15th,
19 1973 until March 30th, 2008?"

20 And in reasonable probability, I don't
21 think there's any question that Champion and
22 International Paper -- the answer to this question is
23 "Yes."

24 Question No. 2. Given the date ranges
25 there, about what dates there are releases of dioxin, I

1 don't think there's any question that every day during
2 the penalty period, which is February 15th, 1973 on
3 through March 30th of 2008, there were daily releases of
4 industrial waste containing dioxin and, therefore, the
5 date ranges should be complete date ranges for Questions
6 1, 2, 3, and 4 -- or I'm sorry, 1, 2, 3, and for
7 International Paper the date range is one from December
8 31st to 2000 every day during that period of time there
9 were releases of dioxin and every day should be included
10 in your calculations.

11 Question No. 3 gets into the penalty
12 ranges, and you are the determiners of what the
13 penalties should be in this case. And Harris County
14 would submit that the appropriate penalty in this case
15 for permitting dioxin to get out of these impoundments
16 during the penalty period from February 1973 through
17 March of 2008 is the maximum amount, \$1,000 a day from
18 February 1973 through August of 1985.

19 The date range of September 1st, 1985 to
20 August 31st, 1997, the appropriate penalty is \$10,000 a
21 day. The next date range is September 1st through
22 December 30th, it is \$25,000 a day.

23 Champion knew as of that date range that
24 its paper mill sludge was laced with dioxin, and it did
25 nothing to go back and figure out, to stop, to warn, to

1 do anything to stop that from happening on a daily
2 basis. It also knew at that point in time in 1985 that
3 dioxin was a hazardous substance.

4 But you are the determiners of what the
5 appropriate penalty should be, and Harris County will
6 accept your judgment, as it must.

7 For International Paper, from
8 December 30th, 2000 to March 30th, 2008, the appropriate
9 penalty is, again, \$25,000 a day. If International
10 Paper was going to buy a paper company and conduct no
11 due diligence, it took the environmental problems that
12 company may have had and the appropriate penalty is
13 \$25,000 a day.

14 With respect to Question 4: "Do you find
15 that any of the following Defendants caused, suffered,
16 allowed, or permitted the handling or disposal of
17 industrial solid waste containing dioxin in such a
18 manner so as to cause the discharge or imminent threat
19 of discharge of industrial solid waste containing dioxin
20 into or adjacent to the waters of the State at any time
21 from December 31st, 1975 until March 30th, 2008?"

22 The answer is without doubt "Yes" for
23 Champion and International Paper.

24 And then for Question No. 5, for those date
25 ranges, given the testimony from Dr. Bedient and

1 Dr. Pardue, every day there was a release of dioxin
2 connected with the paper mill sludge from the Champion
3 facility placed in these impoundments.

4 And again in Question No. 6, you are the
5 ultimate determiner of what is the appropriate penalty;
6 and Harris County would submit that every day should be
7 reflective of the maximum penalty in this amount because
8 dioxin -- it was known that there was a pollution
9 problem at the site. Dioxin was known to be a hazardous
10 substance, and nothing was done by Champion or
11 International Paper to stop its ongoing release.

12 Question No. 7 addresses the penalty -- or
13 the attorney's fees that my firm has incurred for Harris
14 County in bringing this action, and Harris County would
15 submit that the evidence presented to you was that my
16 firm incurred \$10.6 million. We would reduce that by
17 15 percent to reflect the amount that was done on causes
18 of action and claims for which we are not seeking
19 attorney's fees, reducing that amount to \$9 million.

20 You've heard the testimony about -- that we
21 have not been paid for any portion of this case, that
22 the nine-million-dollar figure is calculated using \$900
23 an hour to reflect the risk that we may not be paid at
24 all.

25 I will confess --

1 MR. CARTER: Your Honor, I object to that.

2 THE COURT: Approach.

3 (After a bench discussion outside the
4 hearing of the reporter and jury, the following
5 proceedings were had:)

6 MR. WOTRING: But let me also confess that
7 seeking attorney's fees is more than a little awkward,
8 and in a case like this it's more than a little awkward
9 because I don't want it to get in the way of you, the
10 jury, doing the right thing with respect to addressing
11 the questions that need to be addressed about what
12 companies should do about pollution problems.

13 And on behalf of Harris County and on
14 behalf of my firm, I'll accept whatever judgment you-all
15 want to do with respect to attorney's fees. That is --
16 you are the determiners of the credibility of the
17 parties and the witnesses, and we'll live with whatever
18 determination you want to make.

19 You've also heard that we will get paid out
20 of a percentage up to a certain amount of whatever
21 penalties. That is true. And we will live with
22 whatever determination you want to make. If that
23 determination is we should not get paid under Question
24 7, we will live with that.

25 We -- we have considered this an

1 unbelievable honor to be able to represent the people of
2 Harris County in this matter by being hired by their
3 government. If we were not to get paid, then we would
4 consider that a public service and a worthy, worthy
5 public service and many people served and don't get paid
6 and we would accept your judgment on that particular
7 issue.

8 We don't want this issue about attorney's
9 fees to get in the way of what is the appropriate
10 penalty to be levied in this case. The fact of the
11 matter is, you can't bring one of these cases without
12 having somebody like me and Ms. Baker and Mr. George and
13 Mr. Muir and Mr. Rodriguez come to court prepared to
14 present the case as we have done in this matter.

15 But the evidence in the case is that we
16 have incurred \$9 million in fees for bringing this case.
17 The hourly rate is at \$900. We set it that way at the
18 beginning of the case to reflect the possibility that we
19 might not get paid. If you were to calculate our rate,
20 our hours at a different rate, we would live with your
21 determination, as we must; and we would accept that.

22 And that gets us into the next question,
23 Question No. 8, the "act of God" defense. And the
24 question here is: "Were any of the violations you found
25 in Questions One or Four" -- and One and Four are the

1 questions about: "Were there daily releases caused
2 solely by an act of God?" Solely.

3 I think in connection with this this means
4 only by an act of God, and an act of God is a defined
5 defense. And it says "an occurrence is caused by an act
6 of God if it's caused directly and exclusively by the
7 violence of nature without human intervention or cause
8 and could not have been prevented by reasonable
9 foresight or care."

10 Subsidence is not an act of God, as you
11 heard about. It's not a violent act of nature like a
12 storm or a hurricane or a flood. There's been some
13 discussion of floods and hurricanes in some of the
14 documents and some of the argument of counsel; but
15 there's been no evidence presented to you that any of
16 the daily discharges were caused by solely an act of
17 God. And, therefore, we think the answer for both
18 Champion and International Paper to Question No. 8 is
19 "No."

20 And, therefore, for Question No. 9, you do
21 not need to fill out any daily ranges because that's how
22 you're instructed by the Court, which is to move from
23 Question 8 to Question 10 if you answer "No."

24 Then we get to Question 10, which asks you
25 a very specific question; and if you work through that,

1 the question is: "On any day after September 1st, 1997,
2 were any of the Defendants listed below also a person
3 responsible for solid waste? Answer only for the
4 Defendants that you have determined committed violations
5 in Question Four," and we think when you work through
6 this, that both Champion and International Paper fall
7 within No. 3, by contract, agreement or a person who
8 otherwise arranged to process, store, or dispose of
9 solid waste" as reflected there.

10 But then you get into Question No. 11,
11 which asks you: "Were any of the violations you found
12 in Question Four caused solely by acts or omissions of a
13 third person?" We think the answer there, based upon
14 the evidence in this record, is quite clearly "No" and
15 "No." So, therefore, you would skip Question No. 12 and
16 move directly to the end for No. 25.

17 That's going to conclude my first part of
18 the opening argument. We appreciate your time and your
19 consideration of this case. I will stress again that I
20 know this is an incredible imposition to place on
21 people, to take them out of their normal daily working
22 lives, their normal routine, what they do in their jobs;
23 but I can't stress enough the importance of this
24 particular case because I don't think there is any more
25 important deliberation going on in this country right

1 now than the deliberation you-all are about to start on,
2 what are the appropriate penalties in this case.

3 With that, I'll sit down and speak with you
4 in a few moments.

5 THE COURT: Thank you, Mr. Wotring.

6 Okay. Ladies and gentlemen, we're going to
7 take a brief break and we'll bring you back in -- I
8 apologize. We're going to go ahead and take care of
9 Mr. Benedict first, because he's shorter, and then we'll
10 take a break. But everybody got to stand up and
11 stretch. Sit back down.

12 CLOSING ARGUMENT

13 BY MR. BENEDICT:

14 Good morning.

15 THE JURY: Good morning.

16 MR. BENEDICT: I wish I could stand up here
17 and say it's very brief, so we can get on to break; but
18 I do need to talk to you about a couple of things. It
19 won't take long, so we can get to the break.

20 I almost feel like I need to reintroduce
21 myself. You haven't heard much from me. I'm the guy,
22 the lawyer representing the Texas Commission on
23 Environmental Quality. That's the state environmental
24 agency that you've heard called the "TCEQ" throughout
25 the case.

1 And the TCEQ, as it was explained upfront,
2 is a party when a local government files a suit like
3 this, the TCEQ is made a necessary and indispensable
4 party.

5 What I want to talk to you about today,
6 there have been a couple things that TCEQ has been
7 talked about and I don't recollect they're that
8 important and I normally don't talk about things
9 unimportant, but I think they might be distractions. I
10 just want to talk to you because I don't want the TCEQ
11 to be a distraction for you to consider these issues
12 that Mr. Wotring has talked to you about the importance
13 of it.

14 And the first distraction is -- we're back
15 to is "They're seeking too much." I know Mr. Wotring
16 has talked about that. I think you've heard "billions"
17 mentioned a few times, even "waste pit lottery" and that
18 the TCEQ and Harris County are overreaching in a case on
19 penalties. There's nothing wrong with people asking for
20 something. What is the old saying, "You don't get what
21 you don't ask for?" The problem is it doesn't mean
22 anything because you are the ones that decide the issue.

23 If you think somebody is asking for too
24 much, it's your decision. If you think TCEQ asked for
25 too much money, give them what you think is appropriate,

1 if you think any is appropriate. You are the one in
2 control of that. And so I'm concerned when he talks
3 about the TCEQ wants too much money, that becomes a
4 distraction from the issues that you are deciding, the
5 issues that the Court just went through and read to you.

6 I don't recall hearing a single question
7 that was read, "Did the TCEQ want too much money? Is
8 the TCEQ playing waste pit lottery? Is the TCEQ
9 overreaching?" That question is not in there. The
10 question would be, "How much do you think should be
11 awarded as a penalty?"

12 That's what is important. So when you hear
13 somebody -- if they come up and tell you the TCEQ is
14 asking for too much, it doesn't mean anything because
15 you are in control of that. But I also think it's a
16 little bit unfair to say that.

17 Remember, the TCEQ is here because the
18 statute says we are. The TCEQ gets half the penalty
19 because the statute says that we do. And let's be
20 candid. I don't think I've talked long enough in this
21 trial to overreach on anything. I don't think I have
22 asked for anything.

23 So I just -- again, I don't think that's an
24 important issue; but I don't want that to be a
25 distraction. And if there's any question about that,

1 the TCEQ is simply asking you to go back into the room,
2 to follow the directions that the Court has given, the
3 instructions, to read the Charge and answer the
4 questions to the best of your ability, not the questions
5 that may be posed, not distractions, but the questions
6 in the Charge. That's the only thing I'm going to ask
7 you to do. And if there was any other belief, I didn't
8 want to create that perception. I didn't want that to
9 be a distraction.

10 The second one is way back in opening you
11 heard some references and you've seen it mentioned in
12 evidence two or three times in 19 -- excuse me, a 2005
13 letter from the Texas Parks & Wildlife to the Texas
14 Commission on Environmental Quality saying, "There's
15 some waste pits out here and there's dredging causing a
16 problem." I don't think that's accurate. The letter
17 was sent. That's in evidence. You can go back and look
18 at it. No question about it.

19 But the distraction is what happened next.
20 The suggestion was made that for three years after that,
21 the TCEQ did nothing; and I wanted to address that
22 briefly because that's just a complete irrelevancy.
23 It's a distraction, and I don't want the TCEQ to
24 distract you from the issues that you are going to
25 decide in the Charge that the Court has presented to

1 you.

2 To begin with, Dr. Johns and Mr. Zoch, the
3 two experts that the Defendants put up here, there was
4 no dredging going on in 2005. So what does it matter?
5 Dredging, if any, that was done was done long before
6 that. So if TCEQ didn't do anything after 2005, whether
7 it was 2 years, 3 years, 6 months, or for 20 years, it
8 doesn't matter because the dredging was done.

9 But the second thing is that statement just
10 wasn't fair and it wasn't true. You may recall the
11 stipulation, and that's the only thing I'm going to
12 read, and I'll try to read it slowly, that the parties
13 read earlier is that "After the TCEQ received the Texas
14 Parks & Wildlife Department's April 2005 letter
15 regarding dredging, the TCEQ continued sampling
16 sediments as part of the Total Maximum Daily Load Water
17 Quality Study of the Houston Ship Channel and
18 participated with the United States Environmental
19 Protection Agency, the EPA, in investigating the site.
20 The investigation efforts are documented in a
21 five-volume report of approximately 2,000 pages, dated
22 September 2006, and entitled 'Screening Site Inspection
23 Report' prepared by the TCEQ and submitted to the EPA."

24 In October of 2008, the TCEQ requested the
25 United States Army Corps of Engineers, the Corps of

1 Engineers, to suspend the dredging permit, which had
2 been extended by the Corps of Engineers in December of
3 2007.

4 Now, I don't know how other people define
5 nothing; but going out and conducting thorough
6 investigations, generating a 2,000-page report, working
7 with the TCEQ, doesn't sound like nothing to me; working
8 with KIM LISTEN the Pappadeauxs believe doesn't sound
9 like nothing. And, of course, we all know that by 2008
10 the stipulation is the EPA had already made this a
11 Superfund site.

12 I'm raising it because, again, there's not
13 a question, "Did the TCEQ do anything after 2005?" I
14 don't want that to be a distraction. It's not a fair
15 characterization. The evidence is contrary to it, and I
16 don't want the TCEQ to distract you from answering the
17 important questions that Mr. Wotring talked to you
18 about.

19 That's really all I have to say. I'll let
20 you get on with your break. I do want to thank you
21 again for being here and again repeat that the only
22 request that I have of you is that, based on the
23 evidence you've heard and the instructions from the
24 Court, that you fairly -- this is to the best of your
25 ability to answer the questions in the Charge; and if

1 you do that, I'm happy. I may or may not like the
2 answers, but you've done your job, and that's all I can
3 ask.

4 Thank you very much.

5 THE COURT: Thank you, Mr. Benedict.

6 All right, ladies and gentlemen, at this
7 time we'll take a brief recess.

8 (After a break, the jury was present and
9 the following proceedings were had:)

10 THE COURT: Please be seated.

11 You may proceed, Mr. Carter.

12 MR. CARTER: Thank you, Your Honor.

13 CLOSING ARGUMENT

14 MR. CARTER: I didn't think this moment
15 would ever get here. It's one of the defining moments
16 of a trial, and that's to be able to speak back to the
17 jury after jury selection and to be able to speak again
18 directly to you concerning the evidence in the case and
19 to summarize what we think are the important points for
20 you to take back into the jury room.

21 It has been a long time, and there has been
22 gaps in time, and I know that memories fail us. We're
23 going to go back through some of the evidence, and I
24 have prepared a PowerPoint presentation, as well.

25 Going back to the first day in jury

1 selection, I had the opportunity to speak with Ms. Cole
2 and thank her for her military service. This is one of
3 those times that is protected by our military personnel,
4 and that's to have the opportunity to come before you,
5 12 people who also have had a service, taken their time,
6 taking their daily lives, and to listen to a dispute
7 between other people. I thank you for your service,
8 just as I thank Ms. Cole for her service.

9 I've been practicing for 35 years, and I've
10 talked -- during that time I've talked with a number of
11 people, a number of other lawyers from all over the
12 world. And I've talked to them about their -- the way
13 they do things in trials, and there's no system --
14 although it's imperfect, it can be slow, it can be
15 inefficient; but I'll come before you today, there's no
16 other system in the world that is like our jury system.

17 I thank you again for that service, and
18 there's no other place where I can have the confidence
19 to stand before you and look at the government, the
20 power of the government, and argue to you that we have
21 done nothing wrong. That's the reason we are still
22 here. We are still here.

23 You don't see MIMC and you don't see Waste
24 Management here because they've settled; but we are
25 still here because we did nothing wrong. And we're

1 going to go through the evidence now to show you why in
2 connection -- and you may remember from the first day
3 that we were here in opening statements. You may
4 remember I said you need to listen to what the judge
5 tells you in connection with the Charge, because the
6 Charge is going to be the most important document that
7 you see.

8 This document, ladies and gentlemen, is the
9 contract. It's the contract between you and Judge
10 Baker. Just like with any contract, the words in this
11 document are very important.

12 You don't see any -- you will not see any
13 word such as "warning" in this document. You're not
14 going to see that. That's the reason these -- this
15 Charge is very important and it's very important to look
16 at the words and phrases that are used within the
17 document, and we're going to go through that.

18 We acted responsibly and with the County's
19 approval. And just to go back through a few of the
20 facts and the stipulation back at the first day of
21 trial, IP is paying to remediate the site that the
22 County approved. This isn't about cleanup. This isn't
23 about payment for the cleanup out there. IP has stepped
24 up to the plate and done that. It is working to
25 remediate this site.

1 Going back to 1965 and '66 when -- and
2 going back to my photograph when I was in the fourth
3 grade, that's when this happened. Champion hired a
4 contractor to dispose of waste between those years,
5 hired a contractor.

6 MIMC, no longer here, hired them to dispose
7 of this waste. The County -- the County, itself, sat
8 back there with Dr. Quebedeaux, the only person that
9 could approve it. The County pre-approved the site
10 before any work was ever done.

11 Champion required its contractor in the
12 contract -- and the contract is in evidence, and I ask
13 you to review it -- required its contractor not only to
14 meet, and we're going to go through this, but also to
15 exceed the environmental standards that were in effect
16 at the time.

17 Champion entered into a contract with its
18 contractor only after getting the County's approval.
19 Champion did not cause any release at the site. We had
20 no power to control or maintain the site. And most
21 importantly -- and he said we failed to maintain. We're
22 going to get to that because I want to refer to you the
23 evidence in that.

24 But regarding the power to prevent, the
25 power to prevent -- and when Judge Baker read you the

1 instructions, and we're going to go through this in a
2 minute, the power to prevent, "cause, suffer, allow or
3 permit" requires the power.

4 What power would that be coming from a
5 judge? It must be the legal power to prevent.

6 IP is already paying to remediate the site,
7 and that's what we've talked about. The County is
8 trying to change the rules on you. That's what they're
9 really trying to do.

10 The General Discharge Statute -- and
11 remember, I held up those three statutes. Well, No. 1,
12 one of the statutes that we were wrongly accused of --
13 that's true -- we were wrongly accused of it. That
14 statute is out, and that's the Texas Spill Act. We have
15 two left. We have two left; the General Discharge
16 Statute -- that statute didn't get passed until seven
17 years -- until seven years after the disposal. So the
18 General Discharge Statute didn't even come into effect
19 until 1973, and this disposal was done in 1966.

20 So did we have the power to prevent an
21 event that occurred in 1973 when we didn't own the land?
22 We didn't own the waste. We didn't have any contract
23 with the -- with the contractor at that point in time.
24 We had no contract with the landowner at that point in
25 time. Did we have the power to prevent a release at

1 that point or any day thereafter?

2 That's what this case is about, and we're
3 going to get to the instructions on that.

4 The Solid Waste Disposal Act didn't even
5 get passed until 9 years after Champion no longer owned
6 waste and no longer had a contract for the disposal.
7 There's no reason to punish Champion or IP.

8 Did we do anything wrong? No. Was
9 Champion and IP responsible for maintaining the site?
10 No. Was it Champion that caused, suffered, permitted,
11 or allowed the release of dioxin? No. Did the County
12 approve a daily release? Did their evidence come
13 forward -- the evidence that they brought to you prove a
14 daily release? No. And we're going to show you why.

15 Is this case about protecting the
16 environment? The stipulation that the judge read to you
17 and told you that this case -- what it was not about at
18 the beginning, and we're going to go through that. It's
19 not about protecting the environment. It's about
20 penalties, about them trying to punish us, wrongly
21 accusing us of doing something wrong that we did not do.

22 Does the County deserve any money from
23 Champion or IP? Absolutely not.

24 Now, we were going to handle this -- folks,
25 I'm going to take the first two. Did Champion and IP do

1 anything wrong and was Champion and IP responsible for
2 maintaining the site? I'm going to take those first two
3 and then Dave -- Mr. Schrader, Dave is going to come
4 back and he's going to talk to you about the second two.
5 Was it IP that "caused, suffered, allowed or permitted"
6 an approved daily release? And then I'm going to come
7 back to you and finish with a few closing remarks on the
8 last two.

9 So let's roll on this. Did Champion and IP
10 do anything wrong? Here's the instruction from the
11 Court, and on the Charge it's on Page 6. It will again
12 appear on Page 12. Interestingly, there wasn't anything
13 said about the government about that. That's because
14 they would like to forget this.

15 "You are instructed that the mere fact that
16 Champion Paper generated the waste" -- so, in other
17 words, the fact that we're just the waste generator and
18 the fact that we "contracted with an independent waste
19 disposal company," MIMC, "for its disposal is not, by
20 itself, sufficient to establish that Champion Paper is
21 liable for any discharge."

22 So let me give you an example. If you say,
23 "Well, Champion -- Champion just generated the waste,
24 they must be responsible." Judge Baker has told you
25 that's not enough. A mere generation of the waste is

1 not enough.

2 Well, wait a second. What about this?

3 Well, they also contracted with an independent waste
4 disposal contractor, MIMC, to dispose of the waste.

5 That's not enough. There has to be more for there to be
6 "cause, suffer, allow or permit."

7 The fact that we had a contractor disposal,
8 the fact that we generated the waste is not enough under
9 her instructions to answer Question 1 any other way but
10 "No." Okay.

11 Now, here -- here is Harris County's own
12 witness -- and, look, we don't just have regular cites
13 up here. We've taken it from the trial testimony. Kim
14 has done an outstanding job of giving us daily copies of
15 the transcripts every day. So we've been able to come
16 back and put before you on November 4th, the trial
17 testimony of Dr. Bedient was:

18 "QUESTION: All -- all that Champion did
19 was contract with the company to have material hauled
20 from the paper mill and taken to the site; is that
21 right?" That's all Champion did.

22 Under this instruction, ladies and
23 gentlemen, that's not enough. I could sit down now.
24 You would answer Question 1 "No" to Champion, "No" to
25 International Paper; and Question 4, "No" to

1 International Paper, and "No" to Champion and that's the
2 end of the case.

3 There's more, though. There's more.

4 Dr. Bedient, Harris County's own witness:

5 "QUESTION: Champion didn't design the
6 impoundments at the site, did they?

7 "ANSWER: I don't believe so.

8 "QUESTION: Champion did not construct the
9 impoundments at the site, did they?

10 "ANSWER: That's -- you're correct."

11 Who did that? Those people that are no
12 longer there, MIMC. I could understand why they're no
13 longer here.

14 "QUESTION: Nor did International Paper.
15 Correct?

16 "ANSWER: I think you're correct.

17 "QUESTION: They didn't design the levees
18 at the impoundments?

19 "ANSWER: That's correct.

20 "QUESTION: They didn't build them?

21 "ANSWER: No."

22 What he's saying is we had no involvement
23 in the design, construction, maintenance of the
24 impoundments; and we're going to get to maintenance in
25 just a moment.

1 This is ALL that Champion did:

2 "You are instructed that the mere fact that
3 Champion Paper generated the waste and contracted with
4 an independent waste disposal company for its disposal
5 is not, by itself, sufficient to establish that Champion
6 Paper is liable for any discharge."

7 So where you see that is on Page 6, and
8 it's going to be down here in Question 1. It's going to
9 be in the third paragraph where you're going to read
10 that where it's indented. And that instruction exists
11 right there, Page 6 in Question 1 and on Page 12 in
12 Question 4.

13 But there's more. The County approves it.
14 We've shown you this e-mail -- e-mail. We've shown you
15 these notes of telephone conversations between MIMC --
16 excuse me, between International Paper and
17 Dr. Quebedeaux.

18 "Burns' method of developing a pond and
19 storing these waste materials at the mouth of the San
20 Jacinto River," he approved. "Burns' method at this
21 moment the most satisfactory of any that he knew of."

22 Here is the County talking. And now they
23 want to punish us for something that they approved?

24 Champion acted only after the County's
25 approval. Remember, when you get back you'll have these

1 exhibits, and I want you to look at Dr. Quebedeaux's
2 letters, because when you review those letters -- and
3 I'm talking about the Reese's Peanut Butter Cup deal,
4 one paragraph and the other, those letters are addressed
5 to the contractor. They're not addressed to Champion.
6 He's giving the approval to the contractor to do this
7 work and to make sure that the contractor doesn't let
8 the water get into the San Jacinto River.

9 Those letters are not addressed to Champion
10 because Dr. Quebedeaux knew -- Dr. Quebedeaux knew that
11 the contractor was the one responsible for the work and
12 he knew that the contractor was the one who was going to
13 be responsible for making sure because they were
14 constructing the dikes. They were building the
15 impoundments.

16 And in the December '65 letter, if you look
17 at that, you'll see that it was written to the
18 contractor, McGinnes, MIMC. He was talking to the
19 contractor, not to Champion.

20 Champion required the contractor to comply
21 with the laws. This is language straight from the --
22 from the maintenance -- from the contract where we
23 asked, where we paid for, a quarter of a million
24 dollars, where we paid for MIMC to take our waste and
25 deposit it in a site that was approved by the County to

1 MIMC that they would take responsibility for. And here
2 we're telling them to make sure you do it right. That's
3 what you want a company like Champion to do. That's
4 what you want someone to do, is to make sure that when
5 something is done, that their contractor does it right.
6 That's what we did.

7 Bob Zoch, you heard him testify on
8 October the 30th. "So for Champion to have required
9 their contractor to approach Dr. Quebedeaux...for
10 approval went above and beyond normal practice at the
11 time."

12 We were doing more. We were doing more
13 than what the people back in the day, back in the day,
14 were doing with their waste. So there's no reason to
15 punish IP, because Champion and IP didn't do anything
16 wrong.

17 Was Champion and IP responsible for
18 maintaining the site? The government's lawyer just
19 stood up here and told you that we were responsible for
20 maintaining the site. Let's look at their -- let's look
21 at what he says about this.

22 "This case is not about putting the paper
23 mill sludge in the impoundments at the beginning." So
24 it's not about -- he told you this in opening statement.
25 In opening statement he said, "This case is not about

1 putting the paper mill sludge in the impoundments at the
2 beginning." It's not about the disposal.

3 "And, again, I want to go back to the fact
4 that this case is not about putting it in the site."
5 Not about the disposal. This is what the lawyer is
6 saying in opening statement. "It's about what happened
7 after and the failure to maintain and look after the
8 sludge for the next 35 years."

9 Let's listen to the evidence. Again, Bob
10 Zoch, everybody agrees that Champion had no duty to
11 maintain.

12 "QUESTION: So if I understand, then,
13 correctly, Mr. Zoch, in your opinion, neither Champion,
14 nor International Paper had any maintenance obligations
15 regarding this site post the operations ceasing in
16 1966?"

17 Now remember, under Question No. 1 the
18 period of time begins 1973. We're talking about 1966.

19 "QUESTION: Did Champion have any
20 maintenance obligations regarding this site post the
21 operations ceasing in 1966?

22 "ANSWER: Right, that's my opinion..." that
23 they did not.

24 "QUESTION: At that point in time was there
25 any requirement by Champion, from a regulatory

1 standpoint, to provide ongoing maintenance to the site,
2 ongoing inspections or ongoing monitoring?

3 "ANSWER: There was no such requirement,"
4 by Champion.

5 That may be why MIMC is not here. The
6 Court instructs you also: "The parties have always
7 agreed that neither Champion Paper nor International
8 Paper has ever owned the property on which the Site is
9 located." The County even admits that we didn't own the
10 property, so we had no ownership interest in this
11 property.

12 Judge Baker instructs you further: "You
13 are further instructed that as of 1966, Champion Paper
14 no longer owned the waste and no longer had a contract
15 for disposal at the site."

16 Our contract ended in 1966, in June of
17 1966. The County owned -- by the way, this was
18 Dr. Ford. His deposition was pretty short, but he said
19 a lot of interesting things. And we brought Dr. Ford to
20 you. That was a witness hired by the County. That was
21 the County's own expert witness that they paid for.

22 Dr. Ford comes in, and we had to bring his
23 deposition. You might remember it was during our case,
24 and I asked him:

25 "QUESTION: And back in the '60s, they

1 didn't have any continuing maintenance obligations on a
2 site they didn't own, right?"

3 And what I mean by that is everybody agrees
4 we didn't own the site.

5 "QUESTION: And back in the '60s, they
6 didn't have any continuing maintenance obligations on a
7 site they didn't own, right?"

8 This is the County saying there's no reason
9 for us to further maintain the site after the '60s.

10 "ANSWER: That's right.

11 "QUESTION: And in addition, you're not
12 aware of any post-closure requirements at the time these
13 parties ceased, you know, taking waste to that site?

14 "ANSWER: I'm not aware of that."

15 Champion had no post-closure requirements,
16 by their own paid expert saying that we had no reason to
17 maintain the site after 1966.

18 More from Dr. Ford:

19 "QUESTION: Would an entity that never
20 owned the site" -- i.e. Champion -- "have any ongoing
21 maintenance obligations after discontinuing its disposal
22 operations on that site?

23 "ANSWER: You're talking about '60s?

24 "QUESTION: Yes. They wouldn't have any
25 ongoing maintenance obligations on a site that they

1 didn't own, right?

2 "ANSWER: I'm sorry, yes."

3 Another County witness, Dr. Pardue. He
4 doesn't identify Champion or International Paper for
5 having any responsibility for maintaining these sites.
6 What he doesn't talk about is MIMC.

7 We addressed Dr. Q's concerns, and we
8 didn't hear from the County for another 40 years until
9 this lawsuit was filed. This is a -- this is the 1965
10 memo. "The contractor" -- this is the Champion notes.
11 "The contractor" -- and at that point in time we're
12 talking about MIMC. MIMC has repaired the levee, and
13 you may remember that Dr. Quebedeaux was out there and
14 had made a note about one of the levees had some
15 seepage.

16 "The contractor has repaired the levee, and
17 Dr. Quebedeaux will be invited to inspect the work
18 before disposal operations are resumed."

19 And what that means is, is that in December
20 of '65, or January of '66, contractor repairs the levee.
21 Quebedeaux is invited to come back out. Operations
22 won't resume, but we know they did. Operations won't
23 resume until Quebedeaux inspects. Obvious -- obvious
24 that Quebedeaux must have come out, inspected and
25 approved the levee, and that's the last time we heard

1 from Dr. Quebedeaux.

2 More from Dr. Ford, their own independent
3 expert, their own expert that they paid for:

4 "QUESTION: And he inspected -- he
5 inspected the -- the method" -- he's talking about Dr. Q
6 here -- "And he inspected the method by which this whole
7 operation was going to take place from removing the
8 sludge from the pits to the transportation, correct?

9 "ANSWER: Dr. Quebedeaux was very
10 ubiquitous. He was everywhere. He was everywhere. He
11 was a very active man."

12 Don't you know that if there had been a
13 problem with this site after January of 1966 that
14 Dr. Quebedeaux would have been around to look at it?

15 In fact, in August of '66 -- you may
16 remember this testimony was early in the case -- in
17 August of '66, after the July '66 memo; and we'll get to
18 that in just a minute, that little budget request issue,
19 he testified, and we read the testimony that he gave;
20 and Dr. Quebedeaux said, "I was responsible for
21 designing," or words to that effect. "I was involved in
22 the designing of the site," and he also said, "The site
23 was designed in such a way so there would be no escape
24 to the river."

25 Don't you know that if there had been a

1 problem during the time that we had responsibility for
2 maintenance, which ended in May of '66, no post-closure
3 requirements, no requirement for maintenance, their own
4 witnesses testified to that, don't you know that we
5 would have heard from Dr. Quebedeaux?

6 And this is the budget request that he
7 mentioned. A budget request. This is all the -- this
8 is the only thing that they have of something talking
9 about pollution. We have -- no one has testified about
10 this. That was back in the day, of course. Nobody
11 referenced it back in the day. We don't have any --
12 any -- any other documents about it, other than the fact
13 that this document existed.

14 We don't know what they were talking about,
15 a pollution problem. It certainly wasn't something
16 Quebedeaux was concerned about because we would have
17 heard about it.

18 "A person 'causes, suffers, allows, or
19 permits' an event when that person" -- this is the key
20 word -- "had the power to prevent an event at the time
21 of the event, but failed to do so." That's in the
22 definitions in Question No. 1, and it's in the
23 definition in Question No. 4. "A person 'causes,
24 suffers, allows, or permits' an event when that person
25 had the power to prevent an event at the time of the

1 event, but failed to do so."

2 The time of the event that we're talking
3 about is during the penalty period, starting at the
4 earliest, February the 15th of 1973 under Question No.
5 1; and then Question No. 4 in 1975. Did we have an
6 obligation to maintain? Did we have the ability to
7 prevent? Did we even, according to Harris County's own
8 witnesses, have the reason to maintain? The answer to
9 that is no, we did not.

10 So there's no reason to punish IP because
11 we were not responsible for maintaining or preventing
12 any discharge from the site during the penalty period.

13 I'm going to sit down now for a few
14 minutes. Dave is going to speak to you, and then I'll
15 come back and wrap up. Thank you very much.

16 THE COURT: All right. Mr. Schrader.

17 MR. SCHRADER: Thank you, Your Honor.

18 Good morning, everyone.

19 THE JURY: Good morning.

20 MR. SCHRADER: It's been my privilege to
21 represent International Paper in this case, and I have
22 very much appreciated the attention that you've given to
23 me during my examinations. I'm going to ask you for
24 just a little bit more because there are a couple of
25 issues that I need to talk about.

1 The first question or issue that I'm going
2 to talk about is: Was it Champion or International
3 Paper that caused, suffered, permitted, or allowed a
4 release of dioxin into the San Jacinto River? And the
5 answer to that question, as I'm going to show you, as
6 you've heard already, and we're going to go over, from
7 the County's own witnesses is "No."

8 Now, there were -- there were some releases
9 of waste material containing dioxin into the San Jacinto
10 River from this site. No question about that. We don't
11 know exactly how many days it happened, whether it was
12 10 days, 15 days, 20 days; but we do know why it
13 happened and how it happened.

14 We know that there were third parties, not
15 Champion, not IP, that dug directly into this site with
16 heavy equipment, broke apart the material, and then
17 brought it over to an adjacent area where they separated
18 the sand out and released it back into the water.

19 And there are scientific methods that are
20 available now, and we're going to talk about this, that
21 allow scientists to tell you where dioxin from a
22 particular site came from. It's called fingerprinting.
23 And you can see that the only dioxin that was released
24 from this site was through that process.

25 Dr. Johns came in here and testified, and

1 he was asked: "The dioxin that was found outside of the
2 impoundment that was fingerprinted for the impoundment,
3 your opinion is that it got there from that dredging and
4 sand separation operation; is that right?

5 "ANSWER: Absolutely. There is no question
6 in my mind."

7 Now, we've seen this before. This is --
8 you've seen a lot of photos. This one happens to be
9 from 1998, and you can see in here when the County was
10 putting on its case, at first they were sort of denying
11 this and suggesting there was some erosion that was
12 happening here.

13 Now I think they acknowledge the evidence
14 is just overwhelming that there is this dredging that
15 occurred in this area here (indicating) of the site, dug
16 into there, dug into there, and then it was brought over
17 to this sand separation area and released back in. And
18 you can even see the plume of material spreading out
19 from there where the material was released back into the
20 site, or released back into the river.

21 This is Exhibit 298-B. There is dioxin
22 anywhere you look in the San Jacinto River. It comes
23 from all sorts of sources. You've heard about it. It
24 travels in the air from exhaust and it gets deposited
25 into the river, and it will sink down eventually.

1 But anywhere you test in the San Jacinto
2 River, you're going to find dioxin. That is just the
3 way it is. But there's a way now, a scientifically
4 accepted way, to find out, when you take a sample of
5 dioxin, where did it come from; and the way you do that
6 is by fingerprinting.

7 And when you look at what happened here,
8 this dioxin was extensively tested. It was
9 fingerprinted. The only dioxin that was fingerprinted
10 for this impoundment is in two places. It's right where
11 it was put originally inside of the impoundment or over
12 here in that sand separation area you can see a little
13 bit got up here and a little bit got over in this area
14 (indicating) where it was released back into the river.

15 All -- all of this other dioxin that's up
16 here, all of the stuff that's on the top of this chart,
17 all of it that's down here to the side, immediately to
18 the side -- and remember, you heard this theory that
19 there was a breach over in this corner (indicating) that
20 allowed dioxin to release. It was tested, and that's
21 not from this site.

22 That dioxin all came from other sources.
23 There is no dioxin anywhere else in the San Jacinto
24 River except for in those two places, and you have not
25 heard any expert from the County come in here and tell

1 you any different.

2 So how did it get there? We asked
3 Dr. Johns: "Is there any other way that that dioxin
4 that is from our site, that's up to the northeast
5 corner, is there any other way that that could have
6 gotten there" other than through the activity that he
7 described; that is, somebody moving it over there and
8 sending it back into the river?

9 And he said, "No. That's the only way you
10 could have moved it physically upstream and put it over
11 there. That's the only way it could have happened."

12 Now, I know you've heard from expert
13 witnesses and you understand that they are in here for
14 the parties, right? These are people who come in, and
15 you say "Maybe I shouldn't believe Dr. Johns because
16 he's hired by one of the parties in this case."

17 He's not alone in this. Everybody who's
18 looked at this, other than the two experts brought in
19 here for the County, agree that that's what happened.
20 This is from 2006 from the State Department of Parks &
21 Wildlife, where Mr. Sipocz says in 2006: "In looking
22 over the more recent data, I believe more firmly that
23 the recent sand mining was responsible for the increase
24 in dioxin levels at the site noted between 1994 and
25 2002."

1 So the County's attorneys in this case
2 hired a couple of expert witnesses, despite all the
3 evidence that existed at the time, to come in and
4 testify; and they were both given the same assignment.
5 They were both asked to consider the ways that dioxin
6 could have gotten out of this site.

7 Pardue, one of the two things he was asked
8 to do was to consider the ways dioxin could have gotten
9 out of the site.

10 Bedient: "Yesterday you testified that
11 what you were asked to do was to consider the potential
12 ways that dioxin could have been released from the site,
13 right?"

14 That was their assignment, both of them.

15 Now, I imagine some of you came to this
16 case thinking, you know, "Look, this case is brought by
17 the County, right? So they're going to fully evaluate
18 all the evidence and fairly present it to us, good, bad,
19 however it comes out," they're going to give you the
20 fair story of everything. That's not what happened
21 here.

22 Sadly, unfortunately, that's not what
23 happened here because the County's own lawyers concealed
24 from these experts that they hired the information that
25 they had about dredging, that they knew that dredging

1 occurred into the site and released dioxin into the
2 river. This is Exhibit 25. It's from Mr. Rock Owens.
3 He's one of the attorneys for the County here.

4 In 2009, he acknowledged that "It looks
5 like a large portion of one of the cells," and he's
6 talking about this site, "was dredged away." He knew
7 that as of 2009, just like the fellow from the Parks &
8 Wildlife Department knew back in 2006.

9 The County's experts then, who they hired,
10 Bedient and Pardue, told you that all of the information
11 that they got in this case came from lawyers. I mean,
12 that's kind of odd, isn't it, that they didn't even talk
13 to anybody from the County, itself, like the Parks &
14 Wildlife or, you know, anybody from the Pollution
15 Control department?

16 All of the information that these two
17 folks, these two experts who came in to testify, came
18 from lawyers, including Mr. Wotring and Mr. Owens.
19 There's Bedient who tells you that. Here's Pardue:

20 "QUESTION: And the positions that Harris
21 County is taking in this case you learned from the
22 lawyers, the outside lawyers, right, in conversations
23 with them?

24 "ANSWER: Yeah, those and with some
25 involvement from the Harris County attorneys, as well,

1 yes.

2 "QUESTION: Which Harris County attorneys?"

3 And he tells you who, Mr. Owens and

4 Mr. Wotring.

5 Now, you would think in one of those
6 conversations somebody would have said to them, "Hey,
7 while you're looking at potential ways that dioxin got
8 out of this site, we ought to look into this dredging
9 issue we know about. Somebody dredged into the site,
10 pulled it out and sent it back into the river." Maybe
11 in one of those conversations that would have come up.
12 It didn't. They never mentioned it to their own
13 experts.

14 This is Bedient who testified:

15 "QUESTION: And when you prepared your
16 opinions in this case, am I correct that you did not
17 know that there was dredging into the impoundment?"

18 He says, "That's correct."

19 And he comes in here and testifies in this
20 trial, "I've not analyzed anything to do with dredging."

21 I mean, how can you give Bedient any
22 credibility when he tells you, "I have not even looked
23 at that issue?"

24 This is Pardue: "Let me ask this: The one
25 thing that you did not consider as a potential cause of

1 release of dioxin was dredging activities by third
2 parties directly into the impoundments, themselves,
3 right?

4 "ANSWER: At the time of my report, that's
5 correct, I did not have any information on dredging."

6 The County wanted to put blinders on these
7 experts so they didn't even think about this issue; and
8 the reason why -- the reason why they asked them "Don't
9 even look at that, don't even think about it," is
10 because the County knew that neither Champion nor IP had
11 anything to do with that dredging activity.

12 This is testimony from their own witness,
13 Bedient, here at trial:

14 "QUESTION: Well, what if somebody dredged
15 into the site and actually scooped out material from the
16 site, that would certainly cause material to escape from
17 the site, correct?

18 "ANSWER: If they did that, yes.

19 "QUESTION: Absolutely. And you haven't
20 examined that on behalf of Harris County, right?

21 "ANSWER: That is correct.

22 "QUESTION: Okay. That's because none of
23 the parties that are defendants in this case did the
24 dredging, right?

25 "ANSWER: Right."

1 He didn't look at that issue because it
2 didn't support their attempt to get penalties against
3 Champion and IP in this case. That's not right.

4 Just so there's no doubt about it, I want
5 this to be perfectly clear, the County admits that there
6 is no information that Champion or IP had anything to do
7 with that dredging activity. As a matter of fact,
8 there's no information that Champion or IP ever even
9 knew that that dredging activity was occurring.

10 The County never came and told us about it.
11 The one party in this courtroom that knew that that
12 dredging activity was occurring and did nothing about it
13 was the County. You saw all those documents where they
14 got notice of all that dredging activity. It went to
15 the County, and they didn't do anything about it. Yet,
16 they're in here saying we should be penalized because we
17 didn't do anything about it, even though we didn't even
18 know about it?

19 So after ignoring the issue of the dredging
20 activity had occurred at the site, the County wants you
21 to say, "Oh, forget about that because we know at some
22 point part of the site became inundated." And I want to
23 talk to you about that issue briefly.

24 We know when this site was constructed,
25 Champion knows from documents, because, again, we didn't

1 build the site, didn't own the site; but we know from
2 documents that when it was constructed, it was
3 constructed above the level of the river. And if you
4 look at the photograph from early on, there is some land
5 that exists around that site.

6 What happened over time, over the years and
7 decades that followed, were two things. One is dredging
8 activity began to occur in the river, itself; and I'm
9 talking about right into the impoundment. That came
10 later. But dredging activity began in the river,
11 itself, where -- where millions of cubic yards of sand
12 were pulled out from the river around this site.

13 And what happened? That caused the course
14 of the river to change and become closer to the site,
15 itself. That wasn't the way it existed originally.
16 And, again, the County knew about that, knew that was
17 going on.

18 The second thing that happened was
19 subsidence, and you've heard about this. This area was
20 being developed, as industries do around here. They
21 began pulling the groundwater that's very deep below the
22 surface out for use; and over time, what happens when
23 you pull that lower groundwater out, the earth subsides.
24 And this site here (indicating) was affected by that,
25 and it lowered and it became lower than the river.

1 The County's own experts admit, as they
2 have to admit, that Champion and IP did not cause that
3 subsidence to occur. That's not something that we
4 caused.

5 This is Pardue:

6 "QUESTION: Okay. And the one thing you do
7 know about subsidence is that the defendants are not
8 responsible for causing that subsidence, right?"

9 And he says, "Not for causing the
10 subsidence, that's correct."

11 Bedient says the same thing:

12 "QUESTION: Now, the defendants are not
13 responsible for the fact that groundwater was being
14 sucked out at a rate that dropped this impoundment down
15 or caused it to lower, correct?"

16 He agrees, "That's correct."

17 You heard about this issue of due
18 diligence. I just want to remind you of the timeline.
19 The County claims that this site subsided by 1989.
20 Remember from Dr. Meyer that Champion had sold its mill
21 in 1987, two years before that happened, and then
22 13 years later is when International Paper first was
23 involved as part of Champion with that merger.

24 "Was it Champion/IP that caused, suffered,
25 permitted or allowed a release of dioxin?"

1 The answer to that question is "No" from
2 the County's own witnesses.

3 We weren't responsible for the dredging
4 activity that occurred out there. The County knew about
5 it, didn't do anything to stop it, weren't responsible
6 for subsidence that occurred out at this site. That's
7 not something that Champion or IP had anything to do
8 with. And, frankly, that should be the end of the
9 inquiry as far as Champion or IP are concerned.

10 There's one other thing I do want to talk
11 to you about, though, because we spent a lot of time on
12 it in this trial; and that is, did the County prove to
13 you that there was a daily release of dioxin from this
14 site? Now, the County's theory is that any time this
15 waste material comes into contact with water, it's going
16 to break apart and float away into the water. That's
17 how they come up with their theory for a daily
18 discharge, but the facts and the evidence that you've
19 heard in this case do not support that.

20 Now let me talk to you about the County's
21 theory in this case and what's wrong with it. First of
22 all, as I talked to you about, they didn't even consider
23 dredging activity. They incorrectly, in their opinions,
24 assumed that that eastern impoundment was filled with
25 waste material. It wasn't. We'll talk about that.

1 They mischaracterized and continue today to
2 still mischaracterize this material as being cardboard.
3 They did no fingerprinting anywhere, even though that's
4 an accepted scientific technique. They can't tell you
5 any concentration of dioxin in this river that came from
6 our site, and ultimately they admit that it's impossible
7 to prove what they're asking you to find that there was
8 a daily release.

9 Now, let me start with the issue of the
10 de-watering process. You remember Dr. Pardue came in
11 early in this case and told you that all three sections
12 of the impoundment were filled with waste material and
13 he said he had done a calculation and that's the only
14 way that you could have filled that site because you
15 needed all that space to fill it.

16 And that was important to him because he
17 then said -- remember that breach that exists in 1973 in
18 that eastern section? He said that's important because
19 now that means that eastern section is in contact with
20 the water every day from 1973. All right. That was
21 his -- that was his theory.

22 We now know that -- that what he testified
23 to was just not correct. He completely ignored the fact
24 that this material, when it was placed into the site,
25 was dewatered. It was placed into the western portion;

1 and the eastern portion of that site was used to
2 de-water, to move the water, which was then taken away
3 by barge. So his calculation failed to account for that
4 fact.

5 Doctor -- Mr. Zoch explained this, and he
6 said, "Well, how is it that Pardue got this wrong?" He
7 said he just had forgotten or didn't acknowledge the
8 fact that that's the way that this system was set up.
9 So, again, you may say, "Well, I don't know who to
10 believe." You know, you have Pardue on one side saying
11 one thing and Zoch on the other side saying another
12 thing. Just go back and look at the documents.

13 I mean, this is from a State Department of
14 Health memo -- excuse me -- from 1966 which describes
15 exactly the way that it works, the way that Mr. Zoch
16 told us it works; and there's even a drawing on the
17 back. And this is, again, 1966, at the time it's
18 happening, that shows you the way that it worked and
19 that this area over here (indicating), the eastern
20 section was for de-watering and the waste material was
21 placed only in the western and central part and that
22 when this breach occurred here in 1973 in that eastern
23 corner of the section, it was not in contact with waste
24 material every day because it wasn't even put there.

25 | The de-watering process is important for

1 another issue other than this, too; and that is what did
2 it do to the waste material, itself? What effect did
3 that de-watering process have on the waste material,
4 itself?

5 The County's lawyer has said since the
6 beginning of this case, since opening statements, tried
7 to tell you this material is like cardboard. You heard
8 it even again today, "It's like cardboard, cheap
9 cardboard. You put it in water, and it's just going to
10 break apart and float away." That is just factually
11 wrong. It's factually incorrect.

12 Again, this comes from their own expert.
13 This is Pardue:

14 "QUESTION: And you agree with respect to
15 that waste material that is out there that the test
16 results show that it has a very low permeability,
17 right?"

18 He says: "Yes," that's right.

19 "QUESTION: The material, the waste
20 material that we're talking about here in terms of its
21 permeability to water, it's not -- it's not cardboard,
22 right?"

23 He says: "Perhaps cardboard that has been
24 smashed into -- into a very tight layer."

25 A very tight layer, indeed. This is

1 actually the material Mr. Zoch described that existed at
2 this site after it was dewatered. And he tells us,
3 "Well, it may have looked like cardboard in the sense
4 that it had that characteristic; but in terms of" -- it
5 "says nothing about the physical characteristics of the
6 material that we've discussed here already, because
7 cardboard is basically organic material. It's just
8 fibrous. It doesn't have a lot of these solids in it,
9 these inorganics, water insoluble material. So this was
10 not cardboard. It had very different characteristics of
11 cardboard."

12 What does that mean? It means that the
13 material is impermeable to water, as Mr. Zoch described.
14 If you cut it, it would stand like a brick. And as
15 Dr. Johns told us, because of this de-watering process,
16 once this material was placed in the impoundment and
17 dewatered, it became a very solid mass.

18 And, again, who should you believe,
19 Dr. Johns or the experts for the County? What Dr. Johns
20 described was exactly what the State Department of
21 Health described back in 1966, where it says in a memo,
22 and you have this as one of your exhibits, the material
23 will solidify rapidly. It can be cut so that it stands
24 like a wall; and after a short period of time, water
25 will not penetrate it.

1 And that was what was described in 1966,
2 and Dr. Johns said "That's consistent with my own
3 testimony and experience about how this works."

4 So what does that mean? I spent a lot of
5 time talking about that material. What does that mean
6 for purposes of this case? Why is it important?

7 It means that the material has to be moved
8 by some external force. This is -- this is their own
9 witness again, Bedient: "It won't just mix with water,
10 as we said, right?"

11 And he says: "That's correct. For the
12 sludge, that's correct."

13 "All right. It has to be moved by some
14 external force, right?"

15 "ANSWER: Yes."

16 Mr. Zoch told you it would take some very
17 heavy earth-moving or jetting equipment to move this
18 material, once it was dewatered and put into this site.
19 Like this (indicating). This is what happened in this
20 case. This material was put into the site. It became a
21 solid mass, like everyone, including the State
22 Department of Health, said; but eventually, beginning in
23 the mid-1990s, someone cut into the material, dredged
24 down, broke it apart, mixed it up in the water, moved it
25 over to the site next door, and released it back into

1 the river. And that was done with the County's
2 knowledge.

3 The County says, "But still, you know, once
4 it gets inundated, or at least part of the site becomes
5 inundated, isn't -- isn't the material just going to
6 float off into the water?"

7 No. As Mr. Zoch told you, even if it
8 becomes inundated, the action of the currents, the flood
9 waters, or tidal action are not sufficient to cause
10 erosion of this material.

11 And then you heard from Dr. Johns. And, by
12 the way, Dr. Johns, I didn't post his resume up here,
13 but you'll remember he's a Ph.D. from Texas A & M. He's
14 been an environmental scientist for 30 years. He is the
15 one person who has actually worked on dozens of sites,
16 remediating issues involving dioxin.

17 He said -- and he looked at all the data in
18 this case, and he was asked:

19 "Based on your review of the data in this
20 case, do you believe that the testimony given by
21 Dr. Bedient and Pardue that dioxin was dissolving every
22 day into the river from this site is scientifically
23 supported?

24 "ANSWER: Absolutely not."

25 And why not? He told us that dioxin is a

1 very unique chemical. It's one of the most hydrophobic
2 chemicals known to man -- you heard that also from
3 Bedient and Pardue -- which means that when it's
4 attached, when it's attached to material, like to solids
5 that were placed in here, it doesn't want to go out into
6 water. Its natural tendency is to cling to that
7 material and not float off into water, as Dr. Bedient
8 and Pardue testified.

9 Now, you heard -- you heard in closing
10 that, "Well, we know the material left the site because
11 it's not there anymore." There is no evidence for that.
12 There is zero evidence presented by the County that the
13 material, other than where it was dredged out, that the
14 material that was placed in this site has left in any
15 way.

16 As a matter of fact, in 2010 and 2011, 44
17 to 45 years after the material was place into this site,
18 years after the site -- part of the site had become
19 inundated, or partly inundated with water, there were
20 core samples taken as part of the remediation process;
21 and they found that the material was exactly where MIMC
22 had placed it and it had remained there for 45 years.

23 I want to spend some time on this because
24 he says, well, the material from the central impoundment
25 is gone. No.

1 "QUESTION: Then how about in the -- the
2 central impoundment, do those core samples reveal that
3 there was -- the waste material still remained there?

4 "ANSWER: That's correct also.

5 "And those samples were taken almost
6 50 years after the material was deposited there?"

7 "Yeah. 45 years after."

8 As Dr. Johns told you, if -- what Pardue
9 and Bedient testified to about there being a daily
10 release of dioxin from this site, you would see it. I
11 mean, science would be able to tell you that that's
12 what's happening. You would see a halo, like out from
13 the sun, and you would be able to fingerprint it. And
14 you could say, "I can see it's leaving the site every
15 day," and we could fingerprint it and the concentrations
16 would be highest where it started and it would gradually
17 decrease as it goes away. That doesn't exist here.

18 As we showed you, the fingerprinting, that
19 was done not by the County's expert because they didn't
20 want to know the answer to that question, but by the
21 people actually doing the remediation on the site, shows
22 that that's just not happening.

23 So, you know, you may think, "Well, this
24 fingerprinting that we heard about, is that really
25 science? You know, is that good science?" Pardue

1 admits that it is. He says:

2 "You agree that it's possible for someone
3 to do something called fingerprinting of dioxin, right?"

4 "Yes."

5 "And that's an accepted scientific
6 technology, right?"

7 "ANSWER: It's accepted, yes."

8 But he didn't do it.

9 "But you've done no fingerprinting of
10 dioxin in this case to determine -- to trace it back to
11 its source in the San Jacinto River, right?"

12 "No."

13 Fortunately, it was done; and Dr. Johns
14 looked at it and he told you what it showed. And it
15 doesn't support their theory.

16 Now, they want you to believe that there
17 was a release of dioxin every day from this site. They
18 can't tell you how much. We asked them, "Well, if
19 that's happening, how much was released?"

20 "I don't know."

21 "Okay. Can you tell us any concentration
22 anywhere in the river at any point in time?"

23 "No, I can't tell you that either."

24 This is Bedient. Again, they're asking us
25 for penalties against us every day based on this theory.

1 This is Bedient:

2 "And you cannot, Dr. Bedient, tell this
3 jury that on any specific location on that map of the
4 river that there is -- that there is a concentrated
5 amount of dioxin that came out from this impoundment,
6 correct?"

7 "ANSWER: Not a specific value in the river
8 associated with -- no."

9 They can't point to you a single place in
10 the river where there is dioxin that came from this
11 impoundment. The only people that have presented that
12 evidence to you are Champion and IP through Dr. Johns,
13 who told you exactly where it is and how it got there.

14 You've seen this. This is one of the maps
15 that the County's lawyer showed on his opening statement
16 with various places where dioxin is found or they
17 tested. They can't tell you that any of this came from
18 the impoundment because it didn't. It came from other
19 places that everybody recognizes.

20 Before the County asks that you penalize
21 these two companies, not just for one day but for every
22 single day for 35 years, they have to come in with
23 evidence that there was a violation that occurred every
24 single day for 35 years; and their own witnesses admit
25 that they cannot do that.

1 Remember this with Bedient. We just picked
2 a day with him and said, "Let's take May 8, 1977, was
3 there a release of waste material from the site into the
4 river?"

5 His answer, "Don't have specific
6 information on that day."

7 "And if I asked you the same question about
8 any specific day between 1973 and 2008," that's their
9 penalty period, "would you give me the same answer?"

10 "Yes."

11 I went through the same line of questions
12 with Pardue, picked a different date. He said the same
13 thing.

14 They're asking for penalties. In some
15 cases they're asking you for \$25,000 a day in penalties
16 against a company, and they can't tell you that this
17 happened on any particular day. The most that they tell
18 you is that there was a potential.

19 This is Bedient: "Just to be clear, you
20 can't say there was a release from these pits -- all
21 three pits on any given day, correct?"

22 "ANSWER: That's a correct statement."

23 What he says is: "You think there are
24 mechanisms that allow it to happen, but you can't say
25 any amount that actually came out on any given day,

1 correct?"

2 "ANSWER: Not the amount, no."

3 If he can't tell you whether it happened on
4 any particular day, he can't tell you the amount, he
5 cannot tell you where it is or where it went, they
6 haven't met their burden of proving that there was a
7 violation that entitles them to penalties every day for
8 35 years.

9 The bottom line here is that this material
10 was placed by MIMC at this site back in 1965 and 1966
11 and, except where it was dredged out, it remains exactly
12 where it was put. Some of it now has subsided and is
13 underwater, and you've heard there is a process now
14 going on to remediate the site. But other than where it
15 was dredged out, it remains exactly where it was put 35
16 or now 45, 50 years ago. The answer to the question of
17 whether the County has proven a daily release is no.

18 Mr. Carter is going to address a couple of
19 other issues for us and wrap things up. Again, it's
20 been my privilege to try this case in front of you.
21 Thank you very much.

22 THE COURT: Mr. Carter.

23 MR. CARTER: Thank you, Your Honor.

24 FURTHER CLOSING ARGUMENT

25 BY MR. CARTER:

1 The evidence is overwhelming. This is not
2 -- this is not even a close call. That is the reason I
3 have the confidence and Dave has the confidence to stand
4 before you against the power of the government and -- to
5 stand before you and to say we did nothing wrong because
6 the evidence that we just went through proves it.

7 This case is not and you should not be
8 concerned about -- about it being a part of the
9 environment. This will not be a case in which Harris
10 County is bringing people who have personal injuries or
11 property damage. That's what the County told you, and
12 they have not brought anybody here. That's not a
13 concern about this case, and they admit that.

14 There has been no money being sought for
15 remediation or cleanup. Judge Baker read to you on the
16 first day, and this is from the stipulation by all
17 parties: "Since 2008 the EPA has been overseeing the
18 environmental investigation that's been being performed
19 or paid for by the Defendants as required by federal
20 law. If any penalty payments are assessed in this
21 lawsuit," which I -- obviously I believe they should not
22 be, "the money will not be going for any ongoing site
23 remediation or any ultimate cleanup here."

24 That's what Judge Baker told you. The
25 penalties are going to go into the State's general fund,

1 so that somebody can figure out, "Well, what -- what
2 project am I going to put the money to," or Harris
3 County's general fund and "What -- what am I going to do
4 with it"; but it's not going to go to cleanup.

5 The other thing Judge Baker said, and this
6 is also from the Court's instruction read to you the
7 first day, that participating in the Superfund process,
8 which is what we're doing as a company, participating in
9 the Superfund process has no bearing on whether a party
10 is liable under the Texas statutes claimed in this
11 lawsuit.

12 So the fact that we're participating in the
13 Superfund process to do what we are doing, Harris County
14 isn't doing it -- what we're doing is cleaning this site
15 up. They're not doing it. And that is no reason to
16 assess penalties against us under the Texas statutes
17 being claimed here.

18 So this case is not about the environmental
19 cleanup. It's not about personal injury, and it's not
20 about harm to personal property. This is a case about
21 money for the contingency fee lawyers, and we'll get to
22 that in a minute, the money I just mentioned about going
23 to the general fund, and for punishing -- punishing an
24 innocent party who is not responsible. And the evidence
25 we've brought to you, in fact the evidence from their

1 own experts that we've brought to you, reflects that
2 we're innocent of the charges being brought against us.

3 Before this case even got going, Bob Zoch,
4 who had been retained in the past by Connelly Baker, the
5 law firm here, he said and he testified to you that he
6 had been retained and used by them, a trusted expert for
7 the County, for the County's lawyers, and he told you
8 that, "Yeah, I have worked for them before. Then I
9 received a call from Mr. Connelly, yes, sir; but after I
10 read the pleadings, read the lawsuit, what the case was
11 about, I pretty much decided that I would not work on
12 that project on behalf of the Plaintiffs."

13 In other words, Bob Zoch gets a call from
14 Harris County's lawyers for this case. He looked at it
15 and says, "Hu-huh, I can't work on this case for you. I
16 don't believe in it."

17 We know this case is about the lawyers
18 because pollution control -- and Mr. Allen is sitting
19 over here, and he testified in the case. But we brought
20 to you his deposition testimony in our case. You didn't
21 hear it from the County.

22 What does he say? He says that even the
23 Harris County agency responsible for pollution control
24 did not bring this lawsuit.

25 "What did you say, that this is not a

1 pollution control suit?"

2 "Correct."

3 "So you no longer have control over the
4 case or the penalty being assessed?"

5 "Correct."

6 We heard the description about the lawyers:
7 I don't want to hear anything about -- I don't want to
8 see anything about dredging. I don't want to hear about
9 the dredging.

10 "The information that you've gotten about
11 Harris County's positions in this case have all come
12 from the outside lawyers for Harris County, right?"

13 Is that the way experts, experts, are
14 supposed to come to you? Is that the way the County is
15 supposed to treat transparency? Is that transparent?

16 Pardue: "On those topics on which you've
17 been designated..."

18 "In discussions with counsel, we went over
19 the reports that are being relied on by Harris County
20 for those positions and -- and that's what I'm prepared
21 to discuss today."

22 The lawyers are talking. We heard the
23 lawyer get on the stand from the Connelly Baker firm and
24 testify about all of their fees, fees of which they told
25 you just a minute ago that they haven't been paid.

1 Well, they have been, by MIMC.

2 "So out of that 46, roughly, million
3 dollars, how much of that do you personally stand to
4 gain..." "Several million dollars?"

5 "I suspect so."

6 But they can't tell you how much is -- goes
7 to the case against International Paper.

8 "And sitting here today, you can't tell me
9 how much work, for example, was billed by the hour for
10 any particular defendant in this case?"

11 "We didn't separate it out per defendant.
12 So it's not -- so I don't know if we can. We haven't
13 done it. It's not occurred to me to do it, to segregate
14 the fees out."

15 "So it's not something that you undertook
16 in giving your opinions in this case?"

17 "That's correct."

18 They have no evidence of their attorney's
19 fees, although we do know that they, indeed, have been
20 paid now by MIMC.

21 Is this case about protecting the
22 environment? No. Is this case about the lawyers? Yes.
23 Does the County deserve any money from IP? No.

24 And you've heard the evidence. The County,
25 itself, designed and approved the site. We've heard

1 testimony about that from all of their experts.

2 Pardue -- Ford:

3 "You don't have any fault with the
4 contractor going to Quebedeaux and seeking his approval
5 for the site selection or seeking his approval for the
6 disposal operation process?"

7 "No, I don't have no problem with that.
8 They should have gone to him."

9 Allen, he testifies that's what the parties
10 should have done here, they should have sought his
11 approval. That is what we did.

12 The County -- Dr. Quebedeaux says in his
13 opening remarks, "Well, I was originally involved with
14 the original contractor to design the pits."

15 "And Harris County does not have any
16 different information about that, right?"

17 "No, we don't."

18 This is all testimony from the County.
19 This isn't our witnesses. This is the County's
20 witnesses.

21 The County knew about the dredging and did
22 nothing to stop it. We have Allen, public notices went
23 to the County. He talked about that. 1996, when they
24 got the first notice, until 2009 when dredging finally
25 stopped, did nothing.

1 "Dredging around the site was done with the
2 knowledge of Harris County and without objection,
3 correct?"

4 "Correct."

5 "Did Harris County ever do anything to try
6 and stop the dredging in and around the site from '70 to
7 2009?"

8 "Not to my knowledge."

9 Question One of the Charge, "Do you find
10 that any of the Defendants caused, suffered, allowed, or
11 permitted..."

12 You have to go to the language on Page 6 of
13 your Charge where "cause, suffer, allow or permit" is
14 defined. It has the common meaning. We're talking
15 about the first release that's being claimed, 1973, did
16 we cause, suffer, allow or permit a discharge in 1973,
17 when we were off the property in 1966.

18 "A person 'causes, suffers, allows, or
19 permits' an event when that person had the power to
20 prevent an event at the time of the event, but failed to
21 do so." We did not have the power to prevent an event.
22 That goes to Question One.

23 So the answer to these two questions -- or
24 this question for both Champion and IP is "No"; and
25 that's based upon the overwhelming evidence from the

1 County's witnesses, themselves.

2 Here is the instruction from the Court that
3 was pulled out about power to prevent. And this case is
4 not about the disposal, itself. We've talked about
5 that. That's from the opening statement of the County's
6 own lawyer.

7 And this question is about disposal: "Do
8 you find any of the following Defendants caused,
9 suffered, allowed, or permitted the handling or disposal
10 of solid waste containing dioxin?"

11 The same -- the same instructions on Page
12 -- on Page 12, it's Question Number Four, the same
13 definition for "cause, suffer and allow," did we have
14 the power to prevent an event. And this is from
15 December 31, 1975, until March 30, 2008. This begins in
16 '75. That is almost 10 years after the disposal was
17 done by MIMC. The answer to that is "No."

18 Remember, on Page 12 and on Page 6 to both
19 of these questions it says generation of -- waste
20 generation is not enough, contract with a disposal
21 company is not enough, and the contract ended in 1966.
22 So the answer to this question, Question Number Four, is
23 both "No."

24 Now, if you look back to Page 6, just to
25 give you a little help, that's Question Number One, and

1 if you go to Question Number Two, which is Page 7,
2 you'll see at the top, if you answered yes to Question
3 One, you answer Question Two. But then it says,
4 "Otherwise, do not answer the following question." So
5 if you answer "No" to Question One, then you don't have
6 to answer Question Number Two, you don't have to answer
7 Question Number Three, you don't have to answer -- well,
8 then you get to Question Number Four, which is the
9 second -- for the second statute. So that's the
10 disposal statute.

11 If you answer that question "No," then
12 Question Number Five you don't have to answer, Question
13 Six you don't have to answer, Question Seven you don't
14 have to answer -- that's the one about them trying to
15 get their attorney's fees -- Question Eight you don't
16 have to answer, Question Nine you don't have to answer,
17 Question Ten you don't have to answer, and Questions
18 Eleven and Twelve you don't have to answer.

19 So if you answer Question One "No" and you
20 answer Question Four "No," then you don't have to answer
21 any of the other questions.

22 So is there any reason to punish IP? Did
23 we do anything wrong? No. We're not responsible for
24 maintaining the site. We didn't cause, suffer and allow
25 a release of dioxin. The County didn't prove their

1 case. It's not about protecting the environment. They
2 don't deserve any money.

3 This is the last time -- and I appreciate
4 your attention, and I appreciate you following along
5 with me. I know it's a lot of information in a short
6 period of time. This is the last time I will be able to
7 talk to you until after your verdict, when I'll
8 hopefully have the opportunity to personally come before
9 you and say thank you for your service.

10 You are going to get a chance to hear from
11 the County again; and during that time, since I'm not
12 going to be able to talk to you again, but during that
13 time I challenge you to listen carefully and when he
14 gets up and he says something and you kind of have to
15 turn your head and say, "Well, is that right? What
16 would Carter say? What would Carter say in response to
17 that?"

18 You have to test it. You have to test it
19 with the evidence, "What would Schrader say?" Think
20 about it as he comes back, because I don't get another
21 opportunity here.

22 Thank you very much for your time. On
23 behalf of Karen Edwards and International Paper, I
24 appreciate everything that you've done. Thank you.

25 THE COURT: Thank you, Mr. Carter.

1 Mr. Wotring.

2 MR. WOTRING: Can I have a brief break?

3 THE COURT: Yes.

4 Ladies and gentlemen, we'll have a brief
5 break and then finish up with closing argument.

6 MR. WOTRING: Your Honor, I have a couple
7 of matters I would like to take up.

8 THE COURT: Okay.

9 (Whereupon, the jury left the courtroom and
10 the following proceedings were had outside the presence
11 of the jury:)

12 THE COURT: Please be seated.

13 MR. WOTRING: Your Honor, we are outside
14 the presence of the jury and at this time Harris County
15 would ask for the opportunity to reopen the evidence and
16 submit the UAO and the TCRA memo in response to the
17 argument by counsel for International Paper that Harris
18 County did not fairly evaluate the evidence before
19 bringing this lawsuit. They opened the door. They
20 violated the Court's motion in limine.

21 At this time Harris County would request
22 the opportunity to put those documents into evidence.
23 I'll read them to the jury and respond to that
24 inappropriate closing argument by counsel.

25 There was one other point after we address

1 that point. That has to do with counsel for
2 International Paper also informed the jury, contrary to,
3 I believe, the Court's previous instructions, that
4 because the instruction came from the Judge, "power to
5 prevent" meant the legal power to prevent. I think we
6 discussed that prior to closing, and the Court
7 instructed us that that was not the argument that could
8 be made. Those are the two issues.

9 MR. SCHRADER: On the fairly evaluate the
10 evidence, that was about Dr. Pardue and Dr. Bedient not
11 considering dredging. That was after the lawsuit was
12 filed. The comment wasn't in bringing the lawsuit. It
13 was in presenting the evidence to the jury.

14 THE COURT: Do you want to address the
15 other issue?

16 MR. WOTRING: Your Honor, in response to
17 that, I think the comment was that "You would think
18 that" -- words to the effect, "You would think Harris
19 County would have fairly evaluated the evidence before
20 bringing this lawsuit" and it was not about the experts
21 Pardue and Bedient. The other comment was --

22 THE COURT: Just a moment. We will pull
23 that portion up and look at it. The other issue has to
24 do with the --

25 MR. WOTRING: Argument by Mr. Carter that

1 because the instruction came from the Judge, the power
2 to prevent meant the legal power to prevent. I think
3 this Court gave us an instruction that that argument
4 could not be made.

5 MR. CARTER: Well, I didn't make that
6 argument. I said what it was. I read it, "power to
7 prevent," and I said I thought that's what it meant.

8 MR. WOTRING: No.

9 THE COURT: We will look that one up, as
10 well. So let's take a quick break to do that. Then
11 we'll proceed with rebuttal. Let's go off the record.

12 (Whereupon, after a break, the following
13 proceedings were had outside the presence of the jury:)

14 THE COURT: Please be seated.

15 MR. WOTRING: Your Honor, with respect to
16 the first issue brought up by the Defendants' closing
17 argument, that is, their statement on the record which
18 is marked as Page 45, specifically the quote "But
19 regarding the power to prevent, the power to prevent --
20 and when Judge Baker read you the instruction, and we're
21 going to go through this in a minute, the power to
22 prevent, 'cause, suffer, allow or permit' requires the
23 power. What power would that be coming from a judge?
24 It must be the legal power to prevent."

25 That quote, Harris County would request an

1 instruction reading that "Prior to closing arguments,
2 counsel were instructed that they could not argue that
3 the phrase 'power to prevent' meant the legal power to
4 prevent. Counsel for International Paper violated this
5 Court's instruction and made the argument that "the
6 power to prevent" in the Court's Charge meant the legal
7 power to prevent; and I am instructing you that the
8 instruction in the Charge regarding 'cause, suffer,
9 allow, or permit,' including the power to prevent an
10 event, is not limited to the legal power to prevent the
11 event."

12 MR. STANFIELD: Your Honor, I will be
13 representing Mr. Carter and Mr. Schrader in this
14 proceeding. Your Charge is quite clear, and we assume
15 the juries follow the instructions of the Court.

16 Instruction No. 4 states, "If my
17 instructions use a word -- if they use a word in a way
18 that is different from its ordinary meaning, use the
19 meaning I give you, which will be a proper legal
20 definition."

21 You have not gone on to define it. We
22 assume juries will follow this instruction and say "I am
23 going to assume that because I did not get another
24 instruction from the Court, there is no special
25 definition."

1 I do not remember you instructing
2 Mr. Carter or anyone that we cannot argue what we
3 thought was necessary under the evidence to hold us
4 liable. The jury has heard your instruction. The jury
5 has heard your Charge; and I think what you said
6 earlier, if you are going to say anything, would be what
7 the proper thing is to say, which is "I have given you
8 the instructions. You are to follow my instructions in
9 the Charge," period.

10 Asking for the kind of instruction the
11 County asked for is wholly improper. And we would point
12 out that earlier in this trial, when two of your limine
13 rulings were blatantly violated about claiming a health
14 threat in the groundwater and then using the Highway 90
15 gauge data, the Court showed restraint and did not give
16 a similar instruction; and it's certainly not warranted
17 here.

18 THE COURT: It seems to me the appropriate
19 thing to do would be to give an instruction, and I want
20 to think about exactly how to word this, but that
21 explains to the jury that "The Court has given you the
22 Charge, which is the law of the case that you're to
23 follow." And I don't mind saying in that instruction
24 that the portion that references "the power to prevent"
25 does not contain the word "legal" or something to that

1 effect.

2 MR. STANFIELD: He can argue that, too.

3 THE COURT: He can.

4 MR. CARTER: He can also argue that it's a
5 moral power or a higher power or any other power. There
6 is nothing to refrain him from arguing whatever "power"
7 means, so whatever he wants to attach to "power." I
8 attached legal power because we were talking about the
9 contract, the contract being a legal document. That is
10 what I was referring to, not the fact that you were
11 saying it meant legal power.

12 But the fact is this is all about legal
13 power. It's not about a higher power. So he can very
14 well argue whatever he wants to argue as to what "the
15 power" means or what it doesn't mean. That is just the
16 way you argue cases.

17 MR. WOTRING: I appreciate the instruction
18 on how to argue a case. It's useful. But more to the
19 point, and with a little bit less levity because of the
20 seriousness of the situation, Harris County is formally
21 requesting, quote, "The instruction in the Charge
22 regarding 'cause, suffer, allow or permit,' including
23 the power to prevent an event, is not limited to the
24 legal power to prevent the event," or however the Court
25 may deem appropriate to clarify that particular issue.

1 MR. STANFIELD: That would be an amendment
2 to the Charge, and we would object to that amendment to
3 the Charge. We've already had our formal Charge
4 Conference. The Charge has been read to the jury. It
5 is what it is; and the Court should properly tell the
6 jury, if anything, "I've given you the Charge and the
7 instructions. You are to follow my instructions."

8 THE COURT: This is what I am going to do:
9 I will give the jury an instruction that the Charge that
10 is being submitted to them contains the law of the case.
11 Then I will reread for them that definition and tell
12 them, "Here are the words of the definition that you are
13 to follow"; and I'll re-read that entire definition,
14 which includes "the power to prevent."

15 MR. WOTRING: Will the Court also mention
16 it does not contain the word "legal"?

17 THE COURT: I think by me re-reading it --
18 I'm going to say this is exactly what it says and this
19 is only thing it says.

20 MR. WOTRING: Okay.

21 MR. GEORGE: I'll just note I think the
22 second sentence, "the person causes, suffers," is an
23 instruction, technically.

24 THE COURT: That's fair. That's an
25 instruction.

1 MR. WOTRING: And Harris County has two
2 other issues regarding the closing argument.

3 THE COURT: Just a moment, just so I'm
4 clear. I think probably the appropriate thing for me to
5 do is just read that sentence that's the instruction,
6 since that's the one we're talking about, "a person
7 causes, suffers, allows."

8 MR. CARTER: That's fine.

9 MR. WOTRING: That's fine, yes, Your Honor.

10 THE COURT: I'll do that.

11 MR. WOTRING: Two other issues. Page 65 of
12 the transcript, I understand that's provisional, but
13 here is the quote: "Now, I imagine some of you came to
14 this case thinking, you know, look, this case is brought
15 by the County, right, so they're going to fully evaluate
16 all the evidence and fairly present it to us, good, bad,
17 however it comes out, they're going to give you the fair
18 story of everything. That's not what happened here,"
19 end quote.

20 Harris County at this point requests again
21 that this Court permit us to introduce into evidence the
22 Exhibit No. 453 and Exhibit No. 119. Exhibit 119 is the
23 Unilateral Administrative Order for Remedial
24 Investigation/Feasibility Study. Exhibit No. 453 is the
25 decision document for the Time Critical Removal Action.

1 To respond to this argument that Harris
2 County did not fully evaluate all of the evidence, in
3 response to argument by counsel, if the Court will
4 remember, counsel for defendant argued that the
5 admission of these two documents alone would be so
6 prejudicial to their interest, they would not be able to
7 receive a fair jury trial if they were presented to the
8 jury. They then stand up in closing argument and argue
9 that Harris County didn't fully evaluate all the
10 evidence, suggesting that there was something
11 inappropriate about Harris County bringing this case.
12 And Harris County -- the only fair response is for us to
13 be able to introduce this evidence to the jury and have
14 them consider it. If anything, a limiting instruction
15 that this is what Harris County reviewed prior to
16 bringing the lawsuit.

17 MR. SCHRADER: Mr. Wotring ought to
18 apologize because he represented to you that I said that
19 they didn't fully evaluate the case before, quote,
20 "bringing this lawsuit." I didn't think I said that.
21 In fact, the transcript reflects that I did not say
22 that.

23 This was a discussion about the fact that
24 their experts did not consider dredging. And I said,
25 "Before presenting the facts to the jury, you'd think

1 they would have presented all the facts, even the bad
2 facts; and they didn't because they didn't talk about
3 dredging." I didn't say what he represented to this
4 Court that I said about before filing the lawsuit.

5 This is perfectly appropriate argument that
6 happens in every case, where you say they didn't give
7 you the bad side of the story for them, specifically
8 about dredging. That was the entire context of this
9 discussion.

10 THE COURT: When you consider everything
11 that was said in the closing argument -- it would be one
12 thing if Mr. Schrader had left it open; but he was very
13 specific when he then proceeded to identify what it is
14 he thinks Harris County did not fully evaluate and what
15 he thinks they didn't allow their experts to fully
16 evaluate. And that was the dredging information, and
17 that was the focus of that argument.

18 He was critical of the fact that
19 Drs. Bedient and Pardue didn't review the dredging
20 information or it wasn't given to them, and that was the
21 point he was making. If he had left it open and
22 suggested something else Harris County didn't evaluate
23 or didn't present, that would be one thing; but the
24 focus of that argument clearly was about the fact that
25 he believed -- and the way he argued it to the jury was

1 "They didn't provide to the experts the information
2 about dredging, and that's because it wasn't good for
3 them." I mean, that's the argument they were making,
4 quote/unquote.

5 So with that, I must deny Harris County's
6 request. I don't think that opens the door on that
7 issue.

8 MR. WOTRING: One further matter for the
9 Court's consideration. On Page 88 of the provisional
10 transcript, the argument was made, "So the fact that
11 we're participating in the Superfund process to do what
12 we're doing, Harris County isn't doing it. What we're
13 doing is cleaning up the site. They're not doing it.
14 And that is no reason to assess penalties against us
15 under the Texas statutes being claimed here," end quote.

16 Harris County is participating in the
17 Superfund process, and that has been excluded from
18 evidence and from consideration. And this statement by
19 counsel is a violation of our -- I think the Court's
20 motion in limine and our understanding of how we were
21 going to handle the Superfund process. And we need an
22 instruction to cure the prejudice to Harris County's
23 interest, and we can draft that and submit it to the
24 Court for its consideration, as well.

25 MR. STANFIELD: That is an inaccurate

1 factual statement in the context of this statement.
2 What Mr. Carter argued was totally in line with the
3 stipulation, which is that the Defendants are paying for
4 or performing the investigation, removal, and
5 remediation at the site, period. That is what the
6 stipulation says. The stipulation points out that we
7 are paying for the remediation, which is just another
8 word in common parlance for cleanup.

9 There is nothing in our stipulation to the
10 jury that Harris County is doing that. If Harris County
11 wanted to include something in the stipulation to the
12 jury as part of the record that it was providing
13 comments to documents and things like that, then it
14 could have done that. But Mr. Carter was working within
15 the confines of this stipulation; and now Harris County
16 is trying to come back and add to that stipulation,
17 which was negotiated a month and a half ago at this
18 point.

19 THE COURT: I think this one is a little
20 trickier because of the first sentence, that "The fact
21 that we're participating in the Superfund process to do
22 what we are doing, Harris County isn't doing it," which
23 I think sort of leaves open the implication that Harris
24 County isn't participating at all. However, I think we
25 also have to be fair not to provide a suggestion that

1 Harris County is paying for cleanup or anything like
2 that because I think that goes beyond what this
3 addresses.

4 If you want a plain vanilla instruction
5 that addresses Harris County somehow being involved
6 without suggesting that they're paying for something, I
7 would be open to that.

8 MR. WOTRING: Thank you, Your Honor. We
9 will draft something and submit it for the Court.

10 And I'm going to need eat something. Where
11 is the -- is the jury eating?

12 THE COURT: Off the record.

13 (Whereupon, after a discussion off the
14 record, the following proceedings were had:)

15 THE COURT: Please be seated. Yes, sir.

16 MR. WOTRING: Harris County has drafted an
17 instruction regarding the issue of its participation in
18 the Superfund process. It's requesting an instruction
19 stating: "Counsel for Defendants stated that Harris
20 County was not participating in the Superfund process.
21 That is not true. Harris County is actively
22 participating in the Superfund process as a governmental
23 stakeholder."

24 THE COURT: Why don't you respond to the
25 last part?

1 MR. STANFIELD: Your Honor, the last part,
2 here is how you can deal with that: "Harris County is
3 participating in the Superfund process, but is not
4 funding any part of that process," period.

5 MR. WOTRING: That is incorrect. Harris
6 County is having to fund its participation in the
7 Superfund process for the Superfund site the Defendants
8 created.

9 THE COURT: Well, I think the question is
10 -- Harris County is not contributing funds to the
11 remediation process, correct?

12 MS. BAKER: It's not been ordered to do so
13 like the Defendants have.

14 THE COURT: I understand, but that is a
15 correct factual statement?

16 MR. WOTRING: That is a correct factual
17 statement.

18 THE COURT: Okay. I'm not saying we should
19 word it that way, but I think it's perfectly fine to
20 instruct the jury that -- and I'm happy to say it like
21 this, not the initial part, but to say that "Ladies and
22 gentlemen, I need to give you a few instructions to
23 clarify some matters." That's what I'm going to say,
24 okay?

25 Then I'm happy to give the portion of the

1 instruction that states that Harris County is
2 participating as a governmental stakeholder. I think
3 that's fair because that's accurate. Let's go off the
4 record for a second.

5 (Whereupon, after a discussion off the
6 record, the jury entered the courtroom and the following
7 proceedings were had:)

8 THE COURT: Please be seated.

9 Ladies and gentlemen, before we proceed
10 with the rebuttal argument, there are a few matters that
11 I need to clarify.

12 First of all, the Charge that you all have
13 a copy of and that you're going to take back to the jury
14 room for deliberation, you are to consider that the law
15 of the case and follow all the definitions and
16 instructions and the questions in that document. I'm
17 going to read you an instruction from that Charge:

18 "A person 'causes, suffers, allows, or
19 permits' an event when that person had the power to
20 prevent an event at the time of the event, but failed to
21 do so"; and that is the complete instruction. It says
22 what it says and nothing more.

23 You are also instructed that Harris County
24 is participating in the Superfund process as a
25 governmental stakeholder. As a government, federal law

1 does not require Harris County to contribute funds to
2 the investigation, removal, and remediation process.

3 With that, we will proceed with rebuttal.

4 Mr. Wotring.

5 MR. WOTRING: Thank you, Your Honor.

6 REBUTTAL CLOSING ARGUMENT

7 MR. WOTRING:

8 I do have more to discuss with you, and
9 this is important. I'll repeat what I said on one
10 matter, that I don't believe there is any more important
11 deliberation or proceeding going on with regard to how
12 we're going to handle pollution that we generate than
13 what's going on in this courtroom.

14 I do want to repeat one more thing from
15 Mr. Benedict of the TCEQ who represents the State's
16 interest in this proceeding, that we should not be
17 distracted from that process and these deliberations by
18 distractions that don't go to the Court's Charge.

19 I think the Court has clarified now that
20 Harris County is participating in the Superfund process,
21 as the Court instructed you. I think the Court has also
22 clarified, and it's Harris County's position, that the
23 instruction regarding the power to stop pollution, as
24 reflected in the Charge from the Court's instruction,
25 does not contain the word "legal power"; and with that

1 let me move on to more substantive issues that we have
2 in the time remaining to us.

3 A suggestion has been made that somehow my
4 participation in this, Ms. Baker's participation in this
5 process, is -- makes this outside the Houston pollution
6 control office. I agree. This case is outside Harris
7 County's pollution control office. This case is in the
8 hands of the Harris County Attorney, Mr. Vince Ryan, who
9 is sitting right there. Vince Ryan is elected by the
10 people of Harris County to protect its interests, and
11 that's who is handling this case.

12 And if the suggestion is to be made in this
13 case that somehow I am or Ms. Baker are operating
14 outside or beyond Vince Ryan's control, Mr. O'Rourke's
15 control, or Mr. Owens' control, that's entirely wrong
16 and it gives me attributes of a personality that I just
17 don't have and it gives Mr. Ryan, as a retired
18 lieutenant colonel in the Army Reserves, who volunteered
19 for Vietnam, attributes he certainly doesn't have. And
20 it's very unfortunate that that type of distraction is
21 brought into these proceedings.

22 I'm not going to address any more. I want
23 to get back to the evidence, so you-all can get to the
24 work you need to do and the responsibilities you have.
25 One of those responsibilities is to look at the

1 evidence. I agree with that.

2 I wholeheartedly want you to consider all
3 of the evidence very carefully. This case, I think, is
4 simple; but you all have a lot of evidence and a lot of
5 testimony to consider and a fairly complicated Charge.

6 I think the answers are simple, but there
7 is a lot to consider and a lot of work and a lot of
8 deliberation because this case is that important. And
9 one of the things that has come up in -- that I want to
10 clarify with you is with respect to specific claims
11 about the testimony of Bob Zoch.

12 If I could pull up Slide 2.

13 This does get particular. If you'll
14 remember, Pit B is the middle pit; and he told me that
15 Pit B was full with paper mill sludge containing dioxin.
16 He also told me, if you'll remember, that he had not
17 seen the survey until he came and watched testimony at
18 trial.

19 I'm not going to attribute improper motives
20 to my opponents as they have to me about that fact. He
21 simply failed to consider that survey until he got here.
22 Therefore, his opinions were formed without the benefit
23 of knowing that the site was inundated by the San
24 Jacinto River starting in 1989, and that means his
25 opinions are questionable and should not be relied upon.

1 He did agree with me that Pit B was filled
2 with waste impoundment. He also agreed with me that
3 dredging only impacted the northwest corner of the site,
4 and he agreed that dredging only took place in 1996 and
5 1997.

6 And let me pull up that slide for you. Let
7 me pull up Slide 4. This is Pit B. He agreed that was
8 filled with waste material.

9 And if we go to Slide 7, Pit B is gone.
10 It's underwater. It's gone. It's been washed away, and
11 every aerial photograph you see after 1989 reflects that
12 Pit B is underwater and the waste in it is gone. Even
13 Dr. Zoch, who testified that Pit B was filled with waste
14 material, also testified that Pit B is in this area.

15 And as you can see from the Defendants' own
16 expert's report, that area is underwater. If it was
17 filled with waste material, it would have been even with
18 the western impoundments; and now it is gone because it
19 washed away, contrary to what the Defendants are
20 suggesting. This material is not impervious to the
21 effects of the river or the water, storms, or
22 hurricanes; and it washed away.

23 The suggestion has also been made, which I
24 want to address with you, that somehow there was not
25 waste material in the eastern impoundments.

1 If I could pull up Slide 20.

2 This is the board minutes from 1968. I
3 think we've gone through this. I won't read them in
4 detail. What the board minutes say is they are
5 abandoning the site because it is filled with waste
6 material and they're going to write off its value from
7 \$50,000 to 1.

8 But what it says here, "Completely filled
9 with waste materials and could no longer serve as a
10 dumpsite." Again, if we go back to Slide 4, the people
11 at the time in August of 1968 said that Pits A, B, and C
12 were completely filled with waste material. If you go
13 to Slide 7, Pits B and C are gone. They're under the
14 water.

15 Defendants are suggesting that subsidence
16 had something to do with that. The only expert who has
17 talked about the actual amount of subsidence -- and your
18 memory will reflect this probably better than what I'm
19 going to tell you right now because what we hear about
20 juries is after you all absorb the information
21 collectively, and the reason we have juries, is because
22 you have a more accurate memory collectively of the
23 testimony and are a more accurate processor of that
24 information and reach a better decision than one person
25 or several people. That's why we have the jury system

1 we have.

2 And your memory will and your notes and the
3 testimony of Dr. Bedient is the amount of subsidence
4 from 1973 on was only half a foot. Subsidence did not
5 cause this. What caused the fact that Pits B and C are
6 gone is that they eroded and washed away.

7 And there has been no testimony by any of
8 the Defendants' expert about how this cheap grade of
9 cardboard transformed itself into some water-impervious
10 substance that would have -- would have remained intact,
11 despite years of being under the waters of the San
12 Jacinto River.

13 If we could go to Slide -- just a couple
14 more because I do want you to consider all the evidence
15 and the testimony in this case.

16 If we could go to Slide 19.

17 This is the Champion 1966. There is no
18 evidence this was ever shown to Dr. Quebedeaux. There
19 is no evidence -- in fact, the conclusive evidence is
20 that the Defendants did nothing in response to knowing
21 about the pollution problem at the site, they did
22 nothing to investigate, nothing to report, and nothing
23 to follow up. And there is no evidence to suggest they
24 ever informed Dr. Quebedeaux of this fact, as suggested
25 by counsel.

1 So I enjoin -- or join with the Defendants
2 in their request that you process this information and
3 consider the elements in the Charge thoroughly and
4 completely because that's what this process means and
5 that's what you, as the deliberative body, are required
6 to do under your jury oath.

7 I just want to touch upon a couple of
8 things that I talked about in the beginning of the day
9 in terms of why we think maximum penalties are
10 appropriate in this case. Of course, you are the ones
11 that have that power to set the appropriate penalty; and
12 if you accept the Defendants' supposition, their idea
13 that they should pay nothing, then that's the kind of
14 due diligence that companies will do when they buy each
15 other. If you accept the idea that Defendants should
16 pay nothing for not one single day of a release, then
17 that's the kind of follow-up and investigation and
18 pollution control that you will be saying is appropriate
19 in a situation like this, based upon the evidence.

20 If you accept the idea that when companies
21 buy each other, they don't have to do any due diligence
22 to find any of the environmental liabilities associated
23 with them, then that's the type of due diligence that
24 will be done in a case like this; and if you accept the
25 idea that after manufacturing swimming pools full of

1 sludge laced with dioxin, without any follow-up or any
2 sort of review to make sure that it's not getting out
3 into our environment, then that is what's going to
4 happen not just here, but in other places who are going
5 to be watching the verdict in this case.

6 And you are the voice of the community and
7 the voice of Harris County in terms of what kind of
8 pollution control you want the people of Harris County
9 to have for its residents and for its citizens. There
10 isn't another body right now deliberating about
11 pollution control that is more important than you-all;
12 and the law in Texas is that you, as the citizens and
13 the members of this jury, have the power to set between
14 the minimum and the maximum the amount of pollution
15 control you think that companies should have, in
16 accordance with the law that was given to you by the
17 Judge.

18 And if you should be distracted from
19 considering the evidence and the Court's instruction,
20 which is not that you have to prove a release beyond
21 reasonable doubt each and every day, but only based upon
22 a preponderance of the evidence, the law that is given
23 to you by the Court, you should be distracted from that
24 purpose and that task, then we will all suffer because
25 pollution control will be set back. So that is the

1 responsibility that I'm going to now turn over to you.

2 I do want to make one further comment about
3 attorney's fees. I can't be more sincere. I do not
4 want attorney's fees to get in the way of you-all
5 reaching the correct decision about civil penalties. We
6 will get paid out of a portion of the penalties you
7 award up to a capped amount, and you heard that
8 testimony. If that is all you think is appropriate -- I
9 have spoken to Ms. Baker -- then that is all you should
10 award in terms of attorney's fees.

11 We think we have worked hard on this case.
12 We think we deserve to get paid. We think that we will
13 trust you to be the voice of conscience on what would be
14 reasonable and appropriate and live with that, because
15 that's our form of service, just as so many of y'all
16 have served and provided public service.

17 I don't have anything else. There is
18 dozens of PowerPoint slides I could go through, dozens
19 of pieces of evidence, and probably much more I should
20 be doing to respond to the over 100 PowerPoint slides
21 the Defendants provided to you. What I would ask is
22 that you carefully consider all the evidence and you
23 review the Charge carefully.

24 There is no hurry. There is no more
25 important deliberative body right now looking at

1 pollution control in this country than the people who
2 are about to deliberate what is the appropriate civil
3 penalties and what is the appropriate amount of
4 pollution control which should be set for the people of
5 Harris County and our community.

6 With that, I'll thank you. I hope that we
7 have been been efficient. I trust you all and will be
8 -- it's a weird relationship you have with the jury as a
9 trial attorney. I don't get to talk to you except this
10 one time.

11 I said at the very beginning I think that I
12 have grown as a person, I have grown as an attorney, I
13 certainly have grown as a member of our community, by
14 coming, speaking, listening to the judgment of juries in
15 Harris County. That has uniformly been the case. It is
16 the greatest privilege and honor I can have to come here
17 and present the case to you.

18 Thank you for your service. With that, I
19 will sit down and we will await your verdict.

20 THE COURT: Thank you, Mr. Wotring.

21 Ladies and gentlemen, you now have the
22 Court's Charge, the evidence, and the attorneys'
23 arguments before you. If you'll retire to the jury room
24 and begin deliberating on your verdict.

25 (Whereupon, the jury left the courtroom and

1 began deliberations and, after a break, the following
2 proceedings were had outside the presence of the jury:)

3 THE COURT: Mr. Wotring, you have something
4 to withdraw? We are on the record. Mr. Wotring.

5 MR. WOTRING: Plaintiffs are withdrawing
6 Exhibit No. 133.

7 THE COURT: Mr. Stanfield?

8 MR. STANFIELD: Your Honor, Defendants
9 International Paper and Champion are withdrawing
10 Exhibits 1335, 18, 1053, 1225, 1228, 1234, 707, 901.

11 THE COURT: And I assume -- off the record.

12 (Whereupon, after a discussion off the
13 record, the following proceedings were had:)

14 THE COURT: Back on the record. Is that
15 the agreement from IP about Harris County's withdrawal
16 of their exhibit and by Harris County agreeing to the
17 withdrawal of International Paper's exhibits?

18 MR. WOTRING: Yes, the ones that counsel
19 just identified.

20 MR. STANFIELD: And, Your Honor, my
21 understanding is also we have an agreement to withdraw
22 Exhibit 211. 211-A has already been withdrawn. It is
23 for the Court's purposes. That -- that was Plaintiffs'
24 Exhibit 211; that Plaintiffs' Exhibit 851 will be
25 corrected to remove the last two unrelated pages;

1 Plaintiffs' Exhibit 1233 will be withdrawn; that
2 redactions have been made to Defendants' Exhibit 301 to
3 redact the phrase "displaying in the south basin";
4 redactions have been made to Defendants' Exhibit 1147
5 for the phrase, quote, "old site"; Defendants' 1053 has
6 been withdrawn; Defendants' 1168 has been redacted for
7 certain dollar amounts; Exhibit 1335, Defendants', has
8 been withdrawn; and Defendants' Exhibits 19 and 20 have
9 been withdrawn for the jury's consideration and are for
10 Court purposes only.

11 THE COURT: Off the record.

12 (Whereupon, after a discussion off the
13 record, the following proceedings were had:)

14 THE COURT: We're back on the record. On
15 behalf of Harris County, is that your agreement?

16 MR. MUIR: Yes.

17 THE COURT: I am going to ask you a couple
18 of questions. We're on the record. On behalf of your
19 client, have you examined all of your exhibits and those
20 of opposing counsel?

21 Mr. Muir?

22 MR. MUIR: Yes.

23 THE COURT: Mr. Stanfield?

24 MR. STANFIELD: Yes.

25 THE COURT: Have you confirmed that the

1 redactions, if any, have been performed correctly?

2 Mr. Muir?

3 MR. MUIR: Yes.

4 THE COURT: Mr. Stanfield?

5 MR. STANFIELD: Yes.

6 THE COURT: And do you agree and confirm
7 that these are the admitted exhibits that should go to
8 the jury for their deliberations?

9 Mr. Muir?

10 MR. MUIR: Yes, Your Honor.

11 THE COURT: Mr. Stanfield?

12 MR. STANFIELD: Yes, Your Honor.

13 THE COURT: Off the record.

14 (Whereupon, after a discussion off the
15 record, the following proceedings were had:)

16 THE COURT: Mr. Wotring.

17 MR. WOTRING: Your Honor, we're outside the
18 presence of the jury. And it's my understanding that
19 the first notification that the jury had reached a
20 verdict was prior to the exhibits being shown to the
21 jury or delivered to the jury, and Harris County wants
22 that noted for the record.

23 THE COURT: All right. I'll also note for
24 the record that I then made sure that the exhibits went
25 back to the jury and that they were required to

1 deliberate before they reached their verdict to announce
2 in open Court because I think that's the only
3 appropriate thing to do, is to make sure that they have
4 the exhibits before them. Off the record.

5 (Whereupon, the jury entered the courtroom
6 and the following proceedings were had:)

7 THE COURT: Please be seated.

8 At this time I'll ask the presiding juror
9 have you reached a verdict in this case?

10 PRESIDING JUROR: Yes, ma'am, we have.

11 THE COURT: Is this a unanimous verdict?

12 PRESIDING JUROR: No, it is not.

13 THE COURT: If you'll hand it to Deputy
14 Loya, please. Thank you.

15 Question One, "Do you find that any of the
16 following defendants caused, suffered, allowed, or
17 permitted the discharge of industrial waste containing
18 dioxin into or adjacent to any water in the state at any
19 time from February 15th, 1973, until March 30th, 2008?"

20 Answer as to (A), Champion Paper before
21 December 31st, 2000, "No";

22 Answer as to (B), International Paper on or
23 after December 31st, 2000, "No."

24 Therefore, Question Two and Question Three
25 were not answered.

1 Question Four, "Do you find that any of the
2 following Defendants caused, suffered, allowed, or
3 permitted the handling or disposal of industrial solid
4 waste containing dioxin in such a manner so as to cause
5 the discharge or imminent threat of discharge of
6 industrial solid waste containing dioxin into or
7 adjacent to the water of the State at any time from
8 December 31, 1975, until March 30th, 2008?"

9 Answer as to (A), Champion Paper before
10 December 31st, 2000, "No";

11 Answer as to (B), International Paper on or
12 after December 31st, 2000, "No."

13 Therefore, Questions Five and Six were not
14 answered, as well as Seven, Eight, Nine, Ten, Eleven,
15 and Twelve. It is signed by ten members of the jury.

16 MR. WOTRING: Harris County would ask the
17 Court poll the jury.

18 THE COURT: Ladies and gentlemen, we're
19 going to do what is called polling the jury. What I am
20 going to do is -- actually, what I am going to do is
21 call you juror number one and have you say your name and
22 then I am going to ask you if this is your verdict.
23 I'll start in the back.

24 Juror number one, is this your verdict?

25 MR. BRADLEY: Aaron Bradley, yes.

1 THE COURT: Juror number two, is this your
2 verdict?

3 MS. COLE: Lisa Cole, yes.

4 THE COURT: Juror number three, is this
5 your verdict?

6 MS. SCHMIDT: Mary Helen Schmidt, yes.

7 THE COURT: Juror number four, is this your
8 verdict?

9 MR. VILLARREAL: Jorge Villarreal, yes.

10 THE COURT: Juror number five, is this your
11 verdict?

12 MS. SMITH: Jennifer Smith, no.

13 THE COURT: Juror number six, is this your
14 verdict?

15 MR. BODDEN: Nathaniel Lewis Bodden, yes.

16 THE COURT: Juror number seven, is this your
17 verdict?

18 MR. REDDELL: John Reddell, no.

19 THE COURT: Juror number eight, is this
20 your verdict?

21 MS. SALDANA: Jessica Saldana, yes.

22 THE COURT: Juror number nine, is this your
23 verdict?

24 MS. WHITE: Brenda White, yes.

25 THE COURT: Juror ten, is this your

1 verdict?

2 MS. BUTLER: Crisaundra Butler, yes.

3 THE COURT: Juror number eleven, is this
4 your verdict?

5 MS. SPERANDEO: Heidi Sperandeo, yes.

6 THE COURT: Juror number twelve, is this
7 your verdict?

8 MR. PORTEOUS: Ronald Porteous, yes.

9 THE COURT: All right. Do I have a motion?

10 MR. CARTER: Your Honor, we move to accept
11 the verdict.

12 THE COURT: The verdict is accepted and
13 entered on the record.

14 Ladies and gentlemen, you have completed
15 your service. If you'll retire to the jury room for
16 just a few moments, we'll take care of some housekeeping
17 matters and get you home. Thank you.

18 (Court adjourned)

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1 THE STATE OF TEXAS
2 COUNTY OF HARRIS

3 I, Kimberly Kidd, Official Court Reporter
4 in and for the 295th District Court of Harris County,
5 State of Texas, do hereby certify that the above and
6 foregoing contains a true and correct daily copy
7 transcription of all portions of evidence and other
8 proceedings requested in writing by counsel for the
9 parties to be included in this volume of the Reporter's
10 Record, in the above-styled and numbered cause, all of
11 which occurred in open Court or in chambers and were
12 reported by me.

13 I further certify that this Reporter's
14 Record of the proceedings truly and correctly reflects
15 the exhibits, if any, admitted, tendered in an offer of
16 proof or offered into evidence.

17 WITNESS my hand this the 13th day of
18 November, 2014.

19
20
21 /s/ Kimberly Kidd
22 Kimberly Kidd, Texas CSR No. 2437
23 Expiration Date: 12/31/15
24 Official Court Reporter
25 295th District Court
Harris County, Texas
201 Caroline, 14th Floor
Houston, Texas 77002
(713) 368-6453

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